

EXHIBIT 3

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----X
5 NOVARTIS PHARMA AG,

6 Plaintiff,

7 Case No.
8 Vs. 1:20-cv-00400-GHW

9 INCYTE CORPORATION,

10 Defendant.
11 -----X

12
13 VIDEOTAPED DEPOSITION OF LINDA PULLAN, Ph.D.

14 ***HIGHLY CONFIDENTIAL***

15 One Vanderbilt Avenue

16 New York, New York 10017

17 June 3, 2022
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22 Reported by:

23 Anita M. Trombetta, RMR, CRR
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25 JOB NO. 211041

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June 3, 2022

9:37 a.m.

Highly Confidential Videotaped
Deposition of LINDA PULLAN, Ph.D., held at
the offices of Greenberg Traurig, One
Vanderbilt Avenue, New York, New York 10017
before Anita M. Trombetta, an RMR, CRR, and
a Notary Public of the State of New York.

1
2 A P P E A R A N C E S:

3 GREENBERG TRAURIG

4 Attorneys for Plaintiffs

5 One Vanderbilt Avenue

6 New York, New York 10017

7 BY: SYLVIA SIMSON, ESQ.

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13 51 Madison Avenue

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15 BY: ERIC STOPS, ESQ

16 DANIEL MACH, ESQ.

17 SOPHIA QASIR, ESQ.

18 ANDREW CHALSON, ESQ. (Via Zoom)

19 LUKE PHILLIPS, ESQ. (Via Zoom)

20 F. DOMINIC CERRITO, ESQ. (Via Zoom)

21 ALSO PRESENT:

22 James Curbow, Law Clerk

23 Larry Moskowitz, Legal Video Specialist

24 Anna King (via Zoom)

25 Mohan Rao (via Zoom)

1 L. Pullan, Ph.D. - Highly Confidential

2 THE VIDEOGRAPHER: Good morning. We
3 are on the record. This is the start of
4 media labeled No. 1, of the video-recorded
5 deposition of Linda Pullan, Ph.D., in the
6 matter Novartis Pharma AG versus Incyte
7 Corporation.

8 This deposition is being held at
9 Greenberg Traurig, One Vanderbilt Avenue,
10 New York, New York. Today's date is
11 June 3, 2022, and the time is 9:38 a.m.

12 My name is Larry Moskowitz and I am
13 the legal video specialist from TSG
14 Reporting Inc., headquartered at 228 East
15 45th Street, New York, New York.

16 The court reporter is Anita
17 Trombetta, also in association with TSG
18 Reporting.

19 Will counsel please introduce
20 yourselves for the record.

21 MR. STOPS: Sure. This is Eric
22 Stops from Quinn Emanuel. With me is
23 Sophia Qasir and Daniel Mach, all for the
24 defendant Incyte.

25 MS. SIMSON: Sylvia Simson from

1 L. Pullan, Ph.D. - Highly Confidential
2 Greenberg Traurig on behalf of Novartis
3 Pharma AG. I'll be defending the witness
4 today. With me is my colleague Michael
5 Mirdamadi, Hal Shaftel, and our law clerk
6 James Curbow will be observing today.

7 I also believe there are some folks
8 on the Zoom on behalf of Incyte if you want
9 to introduce them.

10 MR. STOPS: I believe Andy Chalson
11 is on the Zoom, also from Quinn Emanuel.

12 THE VIDEOGRAPHER: Will the reporter
13 please administer the oath.

14 L I N D A P U L L A N, P h D

15 called as a witness, having been duly sworn
16 by a Notary Public, was examined and
17 testified as follows:

18 EXAMINATION BY

19 MR. STOPS:

20 Q. Good morning, again, Dr. Pullan.

21 A. Good morning.

22 Q. Are you personally represented by
23 counsel today?

24 A. No.

25 Q. Did you meet with counsel in

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2 preparation for your deposition?

3 A. Yes, I met with counsel.

4 Q. Who did you meet with in preparation
5 for your deposition?

6 A. The folks here.

7 Q. How many days?

8 A. Two before this.

9 Q. And about how long each day?

10 A. About seven or eight hours.

11 Q. Each day?

12 A. Yes.

13 Q. And you're appearing here today on
14 behalf of Novartis, correct?

15 A. Novartis's firm hired me. I am
16 appearing here on behalf of my own opinions,
17 but Novartis did hire me. Yes.

18 Q. Okay. And you're being paid for
19 your time by Novartis?

20 A. Correct.

21 Q. How many times have you served as an
22 expert in a litigation or arbitration before
23 this?

24 A. Once.

25 Q. And how many times have you been

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2 deposited before this?

3 A. Once.

4 Q. And in that arbitration, you offered
5 testimony at the arbitration as well, correct?

6 A. Correct.

7 Q. And it was a single arbitration
8 before this?

9 A. Correct.

10 Q. And you're familiar with the
11 collaboration and license agreement between
12 Incyte Corporation and Novartis International
13 Pharmaceuticals signed on November 24, 2009,
14 correct?

15 A. I have read the agreement.

16 Q. Just -- I'm going to mark the
17 agreement as Pullan as Pullan Exhibit 1001. I
18 believe we're doing this sequentially from our
19 last set.

20 (Pullan Exhibit 1001, Collaboration
21 and License Agreement Dated November 24,
22 2009, marked for identification.)

23 Q. And this is the agreement that you
24 understand to be the focus of the dispute
25 between the parties, correct?

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2 A. Yes.

3 Q. For today, is it okay if I refer to
4 it as the 2009 agreement?

5 A. I'm okay with that.

6 Q. So you don't need to open that yet,
7 I just want to mark that one just to establish
8 what it was, and that's the focus of today's
9 discussion.

10 After your Ph.D., your first
11 position was in drug discovery at Monsanto
12 Healthcare, right?

13 A. Yes, that's correct.

14 Q. And you were actually employee
15 something like 16 at Monsanto; is that right?

16 A. Monsanto Healthcare.

17 Q. Monsanto Healthcare?

18 A. Right.

19 Q. Which is a division of the larger
20 Monsanto --

21 A. It was at that time. Monsanto
22 acquired Searle pharmaceuticals which was
23 61,000 employees. So we grew up to about
24 200-and-something, and we acquired a 60,000
25 employee firm, and then that was acquired by

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2 Pfizer, which I don't know how many employees
3 they had, 110 or some X-number of thousands.

4 Q. Got it. So at Monsanto Healthcare
5 you were involved in the discovery of new
6 molecules; is that right?

7 A. Yes.

8 MS. SIMSON: Objection to form.

9 BY MR. STOPS:

10 Q. What therapeutic class were you
11 focused on?

12 A. Primarily --

13 MS. SIMSON: Objection to form.

14 Vague.

15 You can answer the question, doctor.

16 A. Primarily central nervous system
17 diseases.

18 Q. Did any of the CNS products that you
19 were working on become marketed drugs while you
20 were at Monsanto?

21 A. Not at Monsanto Healthcare, but at
22 AstraZeneca, yes.

23 Q. So from the Monsanto Healthcare,
24 none of the CNS products --

25 A. Some of the CNS --

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2 Q. Just wait until I finish, please.

3 A. Sorry.

4 Q. Thank you.

5 MS. SIMSON: I don't think --

6 Q. So my question was: Did any of
7 these CNS products that you were working on at
8 Monsanto Healthcare become marketed
9 pharmaceuticals?

10 A. Some of the CNS products at Monsanto
11 Healthcare entered clinical trials.

12 Q. Okay.

13 A. None of them completed the clinical
14 trials.

15 Q. Okay. Do you know what phase
16 clinical trials the compounds made it to?

17 A. Some of the compounds made it to
18 phase 1, some of the compounds made it to
19 phase 2. Most -- most drugs failed at phase 2,
20 the efficacy and sufficient safety to compete
21 in the marketplace.

22 Q. Do you know how many new molecular
23 entities you worked on at Monsanto Healthcare?

24 A. I cannot remember at this time.

25 Q. Would you agree that most drug

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2 candidates in drug discovery and development
3 fail?

4 A. Yes, most candidates fail.

5 Q. About what percentage of new
6 molecules actually become marketed drugs?

7 A. It varies by therapeutic area and,
8 of course, by stage. If you're talking about
9 the -- the compounds as they enter phase 1 and
10 how many get approval, it's about 10 percent,
11 again, varying by stage, varying over history,
12 but it's about 10 percent of those compounds
13 that enter clinical stage, make it to approval.

14 Q. And what about compounds from lab
15 bench, preclinical, to approval?

16 A. There are statistics on the
17 probability of success and it, again, varies
18 by -- by type of molecule, by therapeutic area,
19 by -- when you start the measurement, but it's
20 a smaller number than 10 percent.

21 Q. Would you have a sense of how many
22 molecules go from lab bench into clinicals?

23 MS. SIMSON: Objection to form.

24 Asked and answered.

25 A. I mean, from lab bench is a pretty

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2 vague concept. Many -- many things get worked
3 on at academia for decades, right, and then
4 many molecules are synthesized. I once -- I
5 once led at the Monsanto annual meeting a
6 demonstration game where we had -- it was
7 fun -- where we had passed out cards to all the
8 people who attended the annual stockholders
9 meeting, and we had them turn over their cards
10 and, in essence, said the stage of the molecule
11 and we had them stand up or sit down when they,
12 quote, failed in development. And it's a
13 pretty dramatic illustration of the challenges
14 of drug discovery, but it really does depend on
15 the details, what you mean by that -- is it a
16 hit, is it a lead, is it a drug candidate. And
17 therefore it's difficult to answer from lab
18 bench.

19 Q. Without parsing it in that way, it's
20 a small fraction, correct?

21 MS. SIMSON: Objection to form.

22 Asked and answered.

23 A. It is a small fraction.

24 Q. And you had said about 10 percent
25 make it from phase 1 to approval.

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2 Do you know what the percentages
3 going from -- from each phase -- so I'll ask a
4 more specific question.

5 Do you know how many molecules
6 advance from phase 1 to phase 2?

7 MS. SIMSON: Objection to form. I'm
8 not sure that that accurately characterizes
9 her prior testimony. And so I'll object to
10 the extent it mischaracterizes her prior
11 testimony.

12 You can answer if you can,
13 Dr. Pullan.

14 A. There are published statistics on
15 these. I did refer to them in my report, and
16 I -- I hesitate to give you a precise number
17 because I don't remember exactly what the
18 numbers are.

19 Q. Understood. And when you were at
20 Monsanto Healthcare, were you exclusively
21 working on CNS drug candidates?

22 A. I believe I also participated on
23 some of the projects, but my primary activities
24 were CNS drug discovery.

25 Q. Any particular CNS disease or

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2 condition that you were targeting?

3 A. A number of -- one of the compounds
4 was an antidepressant, one was an Alzheimer's
5 candidate, one was stroke, multiple different
6 diseases.

7 Q. You didn't pick the easy diseases to
8 go after?

9 A. No CNS diseases are easy diseases to
10 go after.

11 Q. You were also involved in drug
12 discovery at Zeneca, which came after, right?

13 A. Correct.

14 Q. And when you were at Zeneca you were
15 on the negotiation team that related to the
16 genomic database that was eventually licensed
17 to Incyte; is that right?

18 A. Yes, I was on the negotiation team
19 for the Incyte genomics deal, yes. A long time
20 ago.

21 Q. Do you recall what year that was?

22 A. Not really, somewhere in the '90s.

23 Q. And you were at the Zeneca location
24 in Wilmington, Delaware, right?

25 A. That is correct.

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2 Q. What was the genomics database, if
3 you recall?

4 MS. SIMSON: I'm just going to note
5 the form objection. I'm assuming that you
6 are referring to the genomics database at
7 Zeneca, but, Dr. Pullan, to the extent you
8 need clarification on the question.

9 A. What we negotiated a deal for at
10 AstraZeneca, was what was at the time a
11 state-of-the-art database of association of
12 genes with functioning disease. By today's
13 standards it was very primitive and by today's
14 standards what anybody can access on the web is
15 better than what we paid for, but that was the
16 best at the time. And it was an a useful tool
17 for researchers in drug discovery to make an
18 association between a molecular target and the
19 disease.

20 Q. And you started Pullan consulting
21 after Kosan Bioscience was sold to BMS, right?

22 A. Correct.

23 Q. And that was about 16 years ago?

24 A. That was about 16 years ago, March,
25 April.

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2 Q. Now, in your report, I believe it's
3 your rebuttal report, you mentioned an Innovent
4 agreement, do you recall that?

5 A. I recall the Innovent agreement.

6 Q. At one point were you Innovent's
7 vice president of business development?

8 A. As a consultant I was titled vice
9 president. I was the only business development
10 person, initially, and then a number of people
11 who were hired, employees at Innovent, reported
12 to me, but I was a consultant with the title
13 vice president, yes.

14 Q. So what years were you holding that
15 title? What years --

16 A. I don't really remember. The
17 company was founded in January of 2012.
18 Fidelity Investments asked me to work with
19 them. I met them at JP Morgan, and I began
20 working with them shortly thereafter, but I
21 don't really remember when the title became
22 associated with the task.

23 Q. So they were a client of Pullan
24 Consulting, but you also held the title of vice
25 president of business development?

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2 A. Correct, because they wanted me to
3 have it.

4 Q. You were not a formal employee of
5 Innovent; is that right?

6 A. Correct, I was a paid as a
7 consultant.

8 Q. Okay. Is Innovent still a client of
9 Pullan Consulting?

10 A. I believe we have let that contract
11 lapse. They are friends and Innovent offered,
12 repeatedly -- requested that I join the company
13 as an employee, but I declined.

14 Q. And what was your involvement in the
15 Innovent agreement with Incyte?

16 A. I have no involvement in the
17 Innovent agreement with Incyte.

18 Q. Okay. You were not involved in the
19 negotiation of that agreement?

20 A. Correct, none. When I refer to the
21 Innovent agreements, I'm speaking of earlier
22 than that.

23 Q. Okay. That agreement -- the
24 Innovent agreement with Incyte that you
25 reference in your rebuttal report was

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2 negotiated after you stopped being vice
3 president of development there?

4 A. No. You asked me about an
5 Innovent-Incyte agreement. The Innovent-Incyte
6 agreement, which is referenced in Rao's report
7 and which I covered in my rebuttal -- touched
8 on in my rebuttal, is not the agreement that I
9 referenced in my report.

10 The agreement on my résumé and the 09:53
11 agreement that I negotiated as lead negotiator,
12 one of the agreements I negotiated as lead
13 negotiator was the Innovent-Eli Lilly deal.

14 Q. Let me try to clarify that, because
15 I think I confused myself.

16 In your rebuttal report, you
17 reference an agreement between Innovent and
18 Incyte, right?

19 A. Because it was listed in the Rao
20 report, right.

21 Q. Yes. Yes.

22 Did you have any involvement in that
23 agreement between Innovent and Incyte?

24 A. I had no involvement in the
25 agreement between Innovent and Incyte.

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2 Q. Were you acting as vice president of
3 business development at Innovent when Innovent
4 entered the agreement with Incyte?

5 A. No, I was not vice president of
6 Innovent at that time.

7 Q. Did you introduce Innovent to
8 Incyte?

9 A. I did not make that introduction.

10 Q. When were you first contacted by
11 counsel regarding serving as an expert in this
12 case?

13 MS. SIMSON: You can answer the
14 question as to time, Dr. Pullan, but I just
15 want to make sure that you understand that
16 our communications and discussions are
17 privileged and I would instruct you not to
18 answer with respect to the content of our
19 discussions.

20 THE WITNESS: Thank you.

21 A. A couple of months ago.

22 Q. Do you recall any more specifically?

23 A. I do not recall.

24 Q. Do you know if it was in 2022?

25 A. Yes, it was in 2022.

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2 Q. And for the purposes of your expert
3 reports, what did you understand the dispute to
4 be between the parties?

5 MS. SIMSON: Dr. Pullan, I'm just
6 going to note again that, please don't
7 divulge the content of any communications
8 you may have had with counsel or with
9 Novartis, but you can go ahead and answer
10 the question as to your general
11 understanding.

12 A. Right. The parties are disputing
13 the interpretation of when royalties are paid
14 by Incyte to Novartis and the duration and
15 step-down of those royalties.

16 Q. And do you understand the resolution
17 of that dispute turns on the proper
18 interpretation of Section 8.3(c)(i) of the
19 agreement? And by "I," it's Roman i in
20 parentheses.

21 MS. SIMSON: Objection to form.

22 A. The interpretation depends on that
23 section and related sections, and I believe on
24 the logic of the industry and the standard
25 practices of the industry.

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2 Q. When you say "logic of the industry
3 and standard practices of the industry," you
4 mean as they relate to the interpretation of
5 that section?

6 MS. SIMSON: Objection to form.

7 A. I -- I'm not sure I really
8 understand what distinction you're making
9 there. What I meant was I know why companies
10 do deals, how they do deals, and therefore,
11 when I read a contract, I bring that judgment
12 to bear.

13 Q. Okay. You offered two expert
14 reports in this matter, correct?

15 A. That is correct, a first and a
16 rebuttal. Yes.

17 Q. And those two reports contain all of
18 the opinions you intend to offer in this
19 matter, correct?

20 A. I stand by those reports.

21 Q. You don't have any new opinions
22 since -- in this matter since those reports,
23 correct?

24 A. I have no new opinions.

25 Q. And I believe yesterday we received

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2 an email saying that you had identified an
3 error in your rebuttal report that needed to be
4 corrected?

5 MS. SIMSON: Objection to form.

6 Mischaracterizes the correction. It was an
7 error in an exhibit to the rebuttal report,
8 not in the rebuttal report itself.

9 BY MR. STOPS:

10 Q. Leaving aside that correction, are
11 there any other corrections that you want to
12 make to either of your reports?

13 A. I do not believe there is any
14 difficulty with any of the other reports.

15 Q. And you've reviewed Mr. Lankau's
16 opening and rebuttal reports, correct?

17 A. I reviewed Mr. Lankau's reports.

18 Q. And you reviewed Dr. Rao's opening
19 and rebuttal reports, correct?

20 A. I reviewed Dr. Rao's reports.

21 Q. Have you reviewed -- is it Dr. --
22 the report of Mr. Tedesco? Have you reviewed
23 his opening rebuttal reports?

24 A. I have reviewed Mr. Tedesco's
25 reports.

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2 Q. In generating your opinions for this
3 case, how did you decide what documents to
4 consider?

5 MS. SIMSON: Objection to form. I
6 would also instruct you, Dr. Pullan, in
7 answering that question, not to divulge the
8 content of any communications you may have
9 had with counsel, but you can otherwise
10 answer the question as a general matter.

11 A. As a general matter, it feels to me
12 I read everything conceivable. It's a heck of
13 a lot of paperwork.

14 Q. How did you select that paper?

15 MS. SIMSON: Same objection and
16 instruction, Dr. Pullan.

17 A. They were the documents relevant to
18 this case.

19 Q. They were provided to you by
20 counsel, correct?

21 MS. SIMSON: Objection to form.
22 Mischaracterizes the materials
23 considerably.

24 A. Some documents were provided by
25 counsel and some were provided by me.

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2 Q. What documents were provided by you?

3 A. The things that are listed in the
4 report that are distinct to my personal
5 history, experience.

6 Q. The things that weren't Bates
7 numbered, is that an accurate way to portray
8 it?

9 MS. SIMSON: Objection to form.

10 A. I'm not sure I really know --

11 Q. Sure.

12 A. -- what's Bates numbered and what is
13 not.

14 Q. Okay. And out of the materials that
15 you considered, how did you decide what
16 materials to rely on in your report?

17 MS. SIMSON: Objection to form. And
18 same instruction with respect to privilege,
19 Dr. Pullan.

20 A. So clearly the most important
21 document is the thing that was signed. I --
22 beyond that, I read and considered everything
23 and applied the many years of experience and
24 the knowledge gained from decades of doing
25 deals. That's how I considered things.

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2 Q. Why is the 2009 agreement the most
3 important document?

4 A. Because it is what the party agreed
5 to.

6 Q. Did you ask counsel to send you
7 documents?

8 MS. SIMSON: Objection to form. And
9 again, Dr. Pullan, same instruction with
10 respect to divulging the content of our
11 communications.

12 A. I honestly don't remember how things
13 came or what I asked for versus what I was
14 provided. And I don't think it matters.

15 Q. Okay. You say in your reports that
16 the cMET portion of the deal is not relevant to
17 the litigation, correct?

18 A. The cMET is not in dispute.

19 Q. That was going to be my next
20 question. Is the reason that you found the
21 cMET portion of the agreement to be of little
22 relevance is because the dispute concerns the
23 JAK-licensed products not the cMET products?

24 MS. SIMSON: Objection to form.

25 A. That is correct.

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2 Q. Now, the cMET royalty term is based
3 upon the same Section 8.3(c) as the JAK royalty
4 term, right?

5 A. Yes.

6 MS. SIMSON: Objection to form.

7 BY MR. STOPS:

8 Q. So the same interpretation of
9 Section 8.3(c) will apply to all of the
10 royalties, correct?

11 MS. SIMSON: Objection to form.

12 Objection to the extent it's asking for a
13 legal conclusion or legal opinion.

14 You can answer the question, if you
15 can Dr. Pullan.

16 A. There is a single provision on
17 royalty term in the agreement. It applies to
18 royalties within the agreement.

19 Q. And that includes both cMET and JAK
20 royalties, correct?

21 MS. SIMSON: Same objections with
22 respect to asking for a legal conclusion or
23 legal opinion, and asked and answered.

24 You can answer if you can,
25 Dr. Pullan.

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2 A. The royalty term applies to cMET,
3 JAK molecules, Novartis's JAK molecules and to
4 the reverse -- what's being termed the reverse
5 royalty.

6 Q. In your opinion, who is the proper
7 person to interpret the meaning of terms in a
8 pharmaceutical agreement?

9 MS. SIMSON: Objection to form.

10 Objection to the extent it's asking for a
11 legal opinion or a legal conclusion.

12 You can answer the question,

13 Dr. Pullan.

14 A. Multiple people can -- can
15 interpret. I think those who have the most
16 experience in the shaping of deals have the
17 most solid grounds for interpreting the normal
18 behavior in a license and the expectations that
19 would have been at the time, but clearly the
20 folks who did the deal contribute to that
21 interpretation, and I read all those
22 depositions, and clearly a lawyer and a judge
23 make a legal call on what the language says.

24 Q. You said that the people with "the
25 most experience in shaping of deals have the

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2 most solid grounds for interpreting the normal
3 behavior in a license and the expectations."
4 Let me give a go at that in a different way in
5 a minute.

6 MR. STOPS: Let me mark your expert
7 reports as exhibits.

8 (Pullan Exhibit 1002, Pullan Opening
9 Expert Report, marked for identification.)

10 BY MR. STOPS:

11 Q. I'm handing you a document I have
12 marked as Pullan 1002.

13 A. Thank you.

14 MS. SIMSON: Thank you.

15 Q. Pullan 1002 is your opening expert
16 report in this matter; is that right?

17 A. Correct.

18 Q. And if you just take a quick moment
19 to verify that that is a full copy of your
20 opening expert report.

21 A. It appears to be so.

22 (Pullan Exhibit 1003, Pullan
23 Rebuttal Report, marked for
24 identification.)

25 BY MR. STOPS:

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2 Q. And handing you the next document
3 which was marked as Pullan 1003.

4 Pullan 1003 is your rebuttal report
5 in this matter, correct?

6 A. That is correct.

7 Q. And I'll represent for the record
8 that the correction that was sent over
9 yesterday is not in this version.

10 A. As so noted.

11 MS. SIMSON: Eric, do you need a
12 copy of that to mark as Pullan 1004?

13 MR. STOPS: I have it. This is just
14 how this one was printed.

15 MS. SIMSON: Got it. Thank you.

16 BY MR. STOPS:

17 Q. In a license agreement it's typical
18 to use defined terms, right?

19 MS. SIMSON: Objection to form.

20 A. Defined terms are a common part of
21 license agreements.

22 Q. Why do parties define terms in
23 license agreements?

24 MS. SIMSON: Objection to form.

25 Objection to the extent it's asking for a

1 L. Pullan, Ph.D. - Highly Confidential
2 legal opinion.

3 You can answer.

4 A. Parties define terms to define
5 terms.

6 Q. Just for fun?

7 MS. SIMSON: Objection to form.

8 A. That's not what I said. They're
9 defining terms.

10 Q. What does it mean for a term to be
11 defined?

12 A. It means to provide a definition. I
13 don't know what you're driving at. I feel it's
14 a nonsense question and I provided you a
15 sensible, if not what you wanted, answer.

16 Q. When reading an agreement, do you
17 give meaning to all the words in the agreement,
18 right?

19 MS. SIMSON: Objection to form,
20 objection to the extent you're asking for a
21 legal opinion or legal conclusion.

22 You can answer, Dr. Pullan, if you
23 can.

24 A. When one reads an agreement, you --
25 I typically start with the license grant and

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2 reach backwards for the definitions that
3 pertain, read the structure, but bringing to it
4 knowing how these things are created and what
5 the parties are trying to accomplish. So one
6 works with the interpretation of the industry
7 as well as what is written on the paper.

8 Q. So you start with the words and then
9 bring industry experience to bear on it, is
10 that what you're saying?

11 MS. SIMSON: Objection to form.

12 Mischaracterizes testimony.

13 A. I think it is that one reads the
14 words and brings industry experience to them.
15 Again, I feel like this is dancing on the head
16 of a pin.

17 Q. What do you mean by that?

18 A. It -- it's kind of obvious, right?

19 Q. I agree.

20 So when interpreting a license
21 agreement, you don't ignore words in the
22 agreement, right?

23 MS. SIMSON: Objection to form.

24 Objection to the extent you're asking for a
25 legal opinion or legal conclusion.

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2 A. I'm -- I may skim over some words as
3 they're not as important as other words. I
4 certainly am not ignoring concepts.

5 Q. Maybe this goes to my question about
6 definitions, but parties can agree to words use
7 words in ways that are different from their
8 customary meanings, right?

9 MS. SIMSON: Objection to form.

10 Objection to the extent you're asking for a
11 legal conclusion or a legal opinion.

12 You can answer the question if you
13 can, Doctor.

14 A. Well, parties generally -- parties
15 in a pharmaceutical licensing agreement
16 generally use words in a way that have evolved
17 over a long period of time and are industry
18 standard. They may not be the same as casual
19 English, but they are interpretable by those
20 who have experience with deals.

21 Q. Terms can be defined in agreements
22 to have meanings that are not common English,
23 correct?

24 MS. SIMSON: Objection to form.

25 A. I believe I said that they may not

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2 be casual, informal English, but they are not a
3 foreign language either. They are a language
4 of the industry.

5 Q. Are you saying that defined terms
6 have established industry meanings?

7 MS. SIMSON: Objection to form.
8 Objection to the extent you're
9 mischaracterizing her testimony.

10 A. I am saying that we use many terms
11 in many agreements, and we come to -- to know
12 how to interpret those based on many
13 experiences of those, but every agreement is --
14 every deal is unique and stands on what is
15 agreed.

16 Q. When you say every deal is unique,
17 what do you mean by that?

18 A. Every deal is unique.

19 Q. Parties can choose to use words in
20 an agreement in ways that are different than
21 industry standard, correct?

22 MS. SIMSON: Objection to form.
23 Objection to the extent you're asking for a
24 legal opinion or legal conclusion.

25 A. I just said that every deal is

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2 unique, but the general practice, especially
3 among companies with deal experience is to
4 understand the normal course of business and
5 use terms in a manner that is largely
6 consistent with industry practice. If we
7 defined patents as oranges, it would be stupid.
8 We define things in a way that is practical,
9 sensible, driving toward a -- a common
10 understanding based on the common
11 pharmaceutical industry framework.

12 Q. Parties could define patents as
13 oranges, right?

14 A. That would be utterly stupid. I've
15 never seen it done.

16 Q. But it could be done?

17 A. That's a nonsense statement. I made
18 it as a nonsense statement. It should be taken
19 as a nonsense statement. It is a nonsense
20 statement. It would not be done.

21 Q. Parties could define oranges to mean
22 patents?

23 MS. SIMSON: Objection to form.

24 A. Ridiculous.

25 Q. The words -- the words used in a

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2 definition --

3 A. Are aiming at a practical solution
4 to build a consensus to achieve a deal to work
5 together. They are not mere throwaways.

6 Q. The words -- words are not
7 throwaways; the words have meaning, correct?

8 MS. SIMSON: Objection to form.

9 Objection to the extent you're asking for a
10 legal opinion or legal conclusion.

11 A. Words have meanings.

12 Q. And why are the same words defined
13 differently in different agreements then?

14 MS. SIMSON: Objection to form.

15 Objection to the extent you're asking for a
16 legal conclusion or legal opinion, also
17 object to the extent you're asking for her
18 to speculate with respect to other deals.

19 A. I think different people draft
20 somewhat differently, but actually, what is
21 remarkably true is how often they are largely
22 the same, because it is industry standard, it
23 is practical, it serves a purpose. It's
24 actually more -- more impressive that they are
25 largely the same across thousands of deals than

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2 trying to make a mole -- mountain out of a
3 molehill.

4 Q. You would agree that differences
5 between definitions across different agreements
6 can convey different meanings, correct?

7 MS. SIMSON: Objection to form,
8 objection to the extent you're asking for a
9 legal opinion or legal conclusion.

10 A. Differences can convey differences.
11 Again, I think you're making mountains out of
12 molehills.

13 What is common is much more -- much
14 more to the point most of the time, so.

15 Q. What do you mean by most of the
16 time?

17 A. Most of the time.

18 Q. Some of the times it's not?

19 A. Every deal is unique, we've said
20 that, but there is industry standard and custom
21 and there is practical working toward an
22 agreement, a collaboration.

23 Q. But you would agree that differences
24 between definitions across different agreements
25 can convey different meanings?

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2 MS. SIMSON: Objection to form.

3 Objection to the extent you're asking for a
4 legal conclusion or legal opinion.

5 A. And I have answered that question
6 before.

7 Q. You didn't actually answer the
8 question. The question is that, despite the
9 fact that your opinion is that terms are used
10 similarly across agreements, even with respect
11 to the same term there can be differences in
12 meanings across different agreements?

13 MS. SIMSON: Objection to form.

14 Objection to the extent you're asking for a
15 legal conclusion or legal opinion.

16 A. I think you're dancing on the head
17 of a pin. There can be differences between
18 agreements. Every agreement is unique, but one
19 brings industry perspective to any agreement.

20 Q. And those differences can matter,
21 right?

22 MS. SIMSON: Objection to form.

23 Objection to the extent you're asking for a
24 legal conclusion or legal opinion.

25 A. Every agreement is unique. And

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2 they -- -- they reflect what is needed in that
3 agreement.

4 Q. In your rebuttal report, you
5 criticized portions of Mr. Lankau's report as
6 being a highly legalistic contract
7 interpretation.

8 Do you recall that?

9 A. Yes, I do recall that.

10 Q. If one were to say that license
11 patent rights encompassed all patent rights,
12 irrespective of which party to the agreement
13 owned the applicable patents, would that be a
14 legal conclusion?

15 MS. SIMSON: Objection to form,
16 objection to the extent you're calling for
17 a legal opinion or a legal conclusion.

18 You can answer the question if you
19 can.

20 A. I believe that a business
21 development professional can interpret a
22 contract as reflecting a business arrangement
23 and can understand those business arrangements.

24 Q. So why were you criticizing
25 Mr. Lankau's report then?

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2 A. Because it's wrong.

3 Q. Well, you have -- you have
4 disagreements with his -- with the -- his
5 substantive opinions, but you also criticize
6 his report, generally, as being a highly
7 legalistic contract interpretation.

8 So I'm just trying to understand
9 what's the basis for that criticism of his
10 report?

11 MS. SIMSON: Objection to form.

12 A. It feels and reads as if the purpose
13 is to find a wiggle room, a legalistic argument
14 to make what is, what is not. It is an effort
15 to apply a dissection for no meaningful
16 purpose. It is not a reflection of the way
17 agreements are structured, to create a
18 partnership, a relationship. It is a backward
19 look of a -- an artificial system. It does not
20 reflect what the parties intended when they
21 started the agreement.

22 Q. So let's unpack that. What do you
23 mean by it's a dissection.

24 A. The --

25 Q. I'm sorry, what did you say?

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2 MS. SIMSON: Hold on one moment.

3 THE WITNESS: Yes.

4 MS. SIMSON: I don't believe she
5 used -- oh, wait, she did, I'm sorry, there
6 was a correction made on the transcript. I
7 apologize, Eric. Go ahead.

8 BY MR. STOPS:

9 Q. So I'll just ask again so we're
10 clear.

11 You said that his -- sorry. That
12 Mr. Lankau's opinions were a dissection.

13 What did you mean by that?

14 A. Taking out of context, not applying
15 the business purposes to the thinking.

16 Q. You said his opinions were -- his
17 analysis was backwards.

18 What did you mean by that?

19 A. They did not start from the premise
20 of a relationship. It started from trying to
21 dissect, torture the words to find a path out.

22 Q. So he shouldn't have started with
23 the words of the agreement?

24 MS. SIMSON: Objection to form.

25 Mischaracterizes the testimony.

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2 A. I did not say he should not start
3 with the words. I said he is not benefitting
4 from the context and perspective that those who
5 negotiate and create the deals bring to the
6 deals.

7 Q. Because you should start with the
8 words in the agreement, right?

9 MS. SIMSON: Objection to form.

10 Asked and answered.

11 A. I think we have -- you're playing
12 the same silly game. You're trying to trap me
13 into saying something stupid, and I'm trying to
14 give you the benefit of my experience, and one
15 starts with the words, but you don't read them
16 as a first grader would read them. You read
17 them as if somebody brings sense and thought to
18 them. And so I stand by my report and my
19 criticism of Mr. Lankau's report.

20 Q. How would a first grader read words?

21 MS. SIMSON: Objection to form.

22 A. A first grader would read words very
23 simply and not bringing context and experience.

24 Q. A first grader would read the plain
25 meaning of the words, right?

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2 A. A first --

3 MS. SIMSON: Objection to form.

4 Objection to the extent asking for a legal
5 opinion or a legal conclusion.

6 A. A first grader would not know the
7 meanings of the words, particularly in an
8 agreement. Ask your first grader to read
9 these. It would be nonsense.

10 Q. You also -- let me try to get the
11 quote right. You also said that Mr. Lankau's
12 analysis was an artificial system.

13 What did you mean by that?

14 MS. SIMSON: Objection to form.

15 Mischaracterizes the testimony. She didn't
16 say the report was an artificial system.
17 Her words were a backward look of an
18 artificial system.

19 MR. STOPS: I also didn't say the
20 report was an artificial system.

21 BY MR. STOPS:

22 Q. My question was: You said that
23 Mr. Lankau's analysis was an artificial system.

24 What did you mean by that?

25 A. It is a backward look attempting to

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2 extract perspective without considering the
3 context and the industry experience and the
4 purpose.

5 THE WITNESS: Could I take a bio
6 break?

7 THE VIDEOGRAPHER: We are going off
8 the record. The time is 10:31 a.m.

9 (Recess.)

10 THE VIDEOGRAPHER: We are back on
11 the record. The time is 10:49 a.m.

12 BY MR. STOPS:

13 Q. In interpreting an agreement, how
14 does one know whether words are being used in a
15 way that's based on custom and practice or
16 based on something that's special to an
17 agreement?

18 MS. SIMSON: Objection to form.
19 Objection to the extent asking for a legal
20 opinion or legal conclusion.

21 You can answer the question.

22 A. So one always brings one's
23 experience in industry to bear. One looks for
24 distinctions that reflect the purpose of the
25 parties and the aim of the -- of the

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2 relationship.

3 Q. How much experience does someone
4 need to understand the words of a
5 pharmaceutical license agreement?

6 MS. SIMSON: Objection to form.

7 A. Depends on which words. It does
8 take a considerable amount of time, and one's
9 confidence and ability to understand a
10 contract, or even a term sheet, grows with
11 experience. Years.

12 Q. So let's -- I guess, for the issues
13 of this case, how much experience does someone
14 need to understand the words at issue?

15 MS. SIMSON: Objection to form.

16 Objection to the extent asking for a legal
17 conclusion or a legal opinion.

18 A. I can't give you a specific number
19 of years or -- and the years, you know, you can
20 have years and you do -- people do -- take
21 transfer officers, for instance, do exactly the
22 same kind of agreement over and over again.
23 That would not benefit as much as of years of
24 doing diverse types of agreements.

25 And it's not merely doing the

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2 agreements. It's reading them. It's working
3 from term sheets to full agreements. All of
4 that brings insight and enhances one's ability
5 to interpret a contract.

6 Q. In your opinion, did any of the
7 people at Incyte in 2009 have that experience?

8 MS. SIMSON: Objection to form.

9 A. I'm not knowledgeable enough to know
10 what the people at Incyte had in terms of
11 experience. I can't answer that question.

12 Q. Well, I think we've established that
13 it's your opinion that a first grader couldn't
14 interpret the words of the agreement.

15 A. That is correct.

16 Q. How about someone with a high school
17 education?

18 A. Probably not.

19 Q. College education?

20 MS. SIMSON: Objection to form.

21 A. At some point, the formal
22 certificate is not the important part. One
23 learns from the job, not -- as far as I know,
24 there are no college-level degrees in business
25 development. So college degree is somewhat

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2 irrelevant.

3 Q. So it's -- it's years of experience
4 in doing and interpreting pharmaceutical
5 license agreements is the requisite level?

6 MS. SIMSON: Objection to form.

7 Objection to the extent asking for a legal
8 conclusion or legal opinion.

9 Your answer?

10 A. Correct.

11 Q. So for the licensee in a
12 pharmaceutical license agreement, what's the
13 source of its value?

14 MS. SIMSON: Objection to form.

15 Vague.

16 A. It depends, right? You're asking
17 an extremely broad, vague question. What is
18 the source of its value? It depends.

19 Q. In what ways does the licensee in a
20 pharmaceutical licensing agreement obtain
21 value?

22 MS. SIMSON: Objection to form.

23 Vague.

24 A. What are they licensing. That
25 drives what drives value. And what roles are

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2 the two parties playing and what are they
3 contributing. That's a pretty open-ended,
4 how-in-the-world-do-you-make-any-sensible-
5 answer question.

6 Q. Well, I'm just trying to understand
7 how these work if there is some kind of
8 industry standards here. So maybe I'll
9 start -- make it a little bit more specific. I
10 said the licensee, so I guess I'm trying to
11 focus on someone who is licensing a product
12 here.

13 So for the licensee in a license
14 agreement for a product, what's their source of
15 value?

16 MS. SIMSON: Objection to form.

17 Vague.

18 A. It still is pretty vague, because,
19 after all, I could license a product, a
20 preclinical, and partner it out before I
21 commercialize it. I could license it at
22 phase 2 and it fails. I could license it at
23 phase 3. I could license it when it's on the
24 market. I could license it with composition
25 matter IP. I could license it without

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2 composition matter IP. I could license it with
3 the other party running clinical trials. I
4 could license it for a territory. I could
5 license it for a specific field. There's so
6 many variations of -- you've got -- you've got
7 to ask a better question than that.

8 Q. Well, no one is licensing a product
9 for it to fail, right?

10 MS. SIMSON: Objection to form.

11 A. I didn't say the purpose was to have
12 it fail, but the benefit could be zero or loss
13 of money.

14 Q. That's always the case, right?

15 MS. SIMSON: Objection to form.

16 A. Not always the case. No.

17 After all, if I license it on the
18 market, it's already got sales. So no, it
19 would not always be the case.

20 Q. So there any product that's being
21 marketed before it is a marketed product always
22 has a chance to fail?

23 MS. SIMSON: Objection to form.

24 A. But -- correct. Any product before
25 it is proved has a chance of failure. And even

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2 after it's approved, it has a chance of not
3 being a commercial success. And even after
4 it's a commercial success it has a chance to
5 lose its market exclusivity and no longer be a
6 commercial success.

7 Q. So it's always risky for the
8 licensee, is that what you're saying?

9 MS. SIMSON: Objection to form.

10 A. There is inherent risk on both
11 sides. It is risky to the licensor as well.
12 The parties interrelationship attempting to
13 mutually benefit and both sides take risks.
14 The selection of a partner is critical because
15 of that. Yes.

16 Q. So leaving aside the scenario where
17 the licensee sublicenses or otherwise disposes
18 of the asset in the process, the source of
19 value for the licensee is always from sales of
20 the product, right?

21 MS. SIMSON: Objection to form.

22 A. That's actually not necessarily true
23 either.

24 Q. Okay.

25 A. They could have a manufacturing

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2 role.

3 Q. That would be a manufacturing
4 agreement though, not a licensing agreement,
5 right?

6 MS. SIMSON: Objection.

7 A. Well, there are licenses in a
8 manufacturing agreement. So it is licensing
9 agreement. The purpose of which is a
10 manufacturing role.

11 Q. Right, but we are talking about a
12 situation where the licensee is licensing a
13 product.

14 A. And that is a license of a product
15 for the purpose of manufacturing. There are
16 licenses of a product for the purposes of
17 research. What you're trying to say, perhaps,
18 is licensing a product for the purpose of
19 commercialization.

20 Q. Okay.

21 A. And what was your question?

22 Q. So in a scenario where the licensee
23 in a licensing agreement is licensing it for
24 the purposes of collaboration, what is the
25 source of the licensee's value?

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2 MS. SIMSON: Objection to form.

3 A. Collaboration. I -- you changed the
4 question. You said collaboration. In a
5 collaboration --

6 Q. Maybe -- I'm sorry. Then I
7 misspoke. I will rephrase.

8 So assuming that we're referring to
9 a licensee -- oh, I said collaboration instead
10 of commercialization. I apologize.

11 For a licensee who is licensing a
12 product for the purposes of commercialization,
13 what is the source of the licensee's value in
14 the licensing agreement?

15 MS. SIMSON: Objection to form.

16 A. So thank you for the reminder that
17 what we are actually talking about is a
18 collaboration, a part of which is for the
19 purpose of commercialization. So there are
20 multiple potential sources of value.

21 Q. What's the primary source of value?

22 MS. SIMSON: Objection to form.

23 A. It depends on the individual deal.
24 It could be data, it could be sales, it could
25 be royalties on sales. In a territorial split,

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2 it depends on the size of the territory, the
3 markets, the specifics.

4 Q. Typically, in a licensing agreement
5 for the purposes of commercializing a product,
6 the licensee pays a royalty to the licensor for
7 the right to sell the license product, correct?

8 MS. SIMSON: Objection to form.

9 A. Typically, but not always.

10 Q. There's always exceptions, right?

11 MS. SIMSON: Objection to form.

12 A. There are always exceptions. Every
13 deal is unique.

14 Q. Under the 2009 agreement between
15 Incyte and Novartis, Novartis obtained the
16 exclusive right to sell JAK-licensed products
17 in every country except for the United States
18 and its territories, right?

19 MS. SIMSON: Objection to form.

20 A. That is correct.

21 Q. And Novartis's JAK licensed product
22 is known as Jakavi, J-A-K-A-V-I, correct?

23 A. That is correct.

24 Q. How many countries does Novartis
25 sell Jakavi in?

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2 MS. SIMSON: Objection to form.

3 A. I don't know.

4 Q. Under the 2009 agreement, Novartis
5 obtained the exclusive right to sell cMET,
6 C-MET, licensed products in every country in
7 the world, right?

8 A. That is correct.

9 MS. SIMSON: Objection to form.

10 Q. And Novartis's cMET licensed product
11 is Tabrecta, T-A-B-R-E-C-T-A, correct?

12 A. I believe so.

13 Q. How many countries does Novartis
14 sell Tabrecta in?

15 A. I don't know. I can't even tell you
16 how many countries there are in the world.

17 Q. Currently, what are the aggregate
18 net sales of Jakavi and Tabrecta?

19 MS. SIMSON: Objection to form.

20 Asked and answered. Actually, withdrawn.
21 Objection to form. Vague. I'm also going
22 to just put a standing objection on the
23 record with respect to questions about
24 Tabrecta, given our stipulation.

25 MR. STOPS: I'm sorry, what

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2 stipulation?

3 MS. SIMSON: Our stipulation about
4 Tabrecta not being relevant to the case.

5 MR. STOPS: There's no such
6 stipulation.

7 MS. SIMSON: There is such
8 stipulation. I'm happy to mark it as an
9 exhibit if you'd like. I'm just putting a
10 standing objection on the record, Eric. If
11 you don't agree with me --

12 (Multiple speakers.)

13 MR. STOPS: Fine. I just want to
14 make it clear that there is no such
15 stipulation. We don't agree there is such
16 stipulation.

17 MS. SIMSON: And such a stipulation
18 has been signed by both sides. That's our
19 position.

20 THE WITNESS: And I don't know the
21 answer anyway.

22 MR. MACH: Sorry to bother you. Do
23 we need to pull up the stipulation?

24 MS. SIMSON: I was just putting a
25 standing objection on the record.

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2 MR. MACH: If there --

3 (Multiple speakers.)

4 MS. SIMSON: I have not instructed
5 the witness not to answer. I was putting a
6 standing objection on the record.

7 MR. MACH: I'm just trying to help.

8 MR. STOPS: And that's fine.

9 BY MR. STOPS:

10 Q. And how much profit has Novartis
11 forecasted that it will make for the life of
12 Jakavi and Tabrecta?

13 MS. SIMSON: Objection to form.
14 Calls for speculation.

15 A. And I don't know.

16 Q. You reviewed the deposition
17 testimony of Brian Goldfus, correct?

18 A. Yes.

19 Q. All of it?

20 A. I believe so.

21 Q. You're aware that Brian Goldfus
22 testified that the value of the royalty from
23 Incyte to Novartis was in the realm of --
24 projected to be in the realm of one percent of
25 the overall profits of the deal, correct?

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2 MS. SIMSON: Objection to form.

3 A. I don't --

4 MS. SIMSON: Objection to the extent
5 it mischaracterizes Brian Goldfus's testimony.

6 A. I don't specifically remember that.
7 And I -- I find the argument that the size of
8 the number in dispute has relevance to the
9 dispute not -- not sensible.

10 Q. So you agree that the -- the value,
11 the projected values of the various royalty
12 streams are irrelevant to resolving the
13 dispute?

14 MS. SIMSON: Objection to form.
15 Mischaracterizes Dr. Pullan's testimony
16 and her opinions.

17 A. There is an agreement, and whether
18 they turned out to be as projected, whether
19 they turned out to be bigger or smaller is
20 irrelevant. The parties share in the success.

21 Q. Are you saying that projections are
22 relevant but only at the time of the agreement?

23 MS. SIMSON: Objection to form.

24 Mischaracterizes testimony.

25 A. Relevant to what?

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2 Q. Resolving the dispute here.

3 MS. SIMSON: Same objections.

4 A. I think that's too broad a question
5 and I'm not sure I really know what you're
6 trying to ask.

7 Q. I'm actually just trying to
8 understand what you had said a few answers ago.
9 So give me one second.

10 You had said something about the --
11 the value of the number in dispute -- sorry?

12 You said that the argument that the
13 value of the number in dispute has relevance to
14 the dispute was not sensible.

15 MS. SIMSON: Objection to form, and
16 to the extent it mischaracterizes her
17 testimony.

18 A. If I say I owe you X percent of
19 sales, whether the sales of big or small is
20 irrelevant. I owe you X percent of sales.

21 Q. Okay. So you're saying the --

22 A. Unless the parties specifically
23 stipulated that there was such a term, and
24 there is not.

25 Q. Okay. So you're saying in this --

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2 for this dispute, how things actually worked
3 out aren't relevant to -- resolving the issue?

4 MS. SIMSON: Objection to form and
5 objection to the extent asking for a legal
6 conclusion or opinion.

7 A. That the size of the sales are not
8 relevant to determining the dispute.

9 Q. So in your opinion, it makes no
10 difference if Incyte is making a lot of money
11 or if Novartis is making a lot of money or if
12 both parties are making no money on the
13 agreement for actually resolving the contract
14 dispute at issue, correct?

15 MS. SIMSON: Objection to form.

16 Mischaracterizes testimony, as well as her
17 opinions in her report.

18 A. I do stand by my report and I do
19 believe that the dispute should not be on the
20 basis of whether the projections were correct
21 or which side is making how much money. Both
22 parties have wonderfully succeeded and
23 that's -- the drug has succeeded and that is a
24 tribute to the collaboration. It is the result
25 of the collaboration, and that's great. It

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2 doesn't change what is written in the contract
3 or what is agreed.

4 Q. Maybe there's another way to ask the
5 question, I think you'll agree with this. The
6 interpretation of a contract would be the same
7 if we were doing it in 2009 or today; is that
8 right?

9 MS. SIMSON: Objection to form.

10 Objection to the extent you're asking for a
11 legal conclusion or legal opinion.

12 A. In 2009, I don't believe there was
13 any dispute. So I think it does matter.

14 Q. Well, if you were hired to answer
15 the question of -- --

16 A. What is this agreement about.

17 Q. -- what does this mean, right after
18 the agreement was signed or today, there -- the
19 analysis would be the same?

20 MS. SIMSON: Objection to form.

21 Vague. Incomplete hypothetical.

22 A. It is a hypothetical. And I did
23 consider all the materials post signing as well
24 as presigning, and I read all the reports to
25 think hard about my opinion.

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2 However, I believe that my opinion
3 when I very first read the contract is exactly
4 where I ended up after a great deal of thought.
5 So I do believe the clauses and the structure
6 of the deal are clear, were clear.

7 Q. Are you done?

8 A. Yes.

9 Q. So when the agreement was signed in
10 November of 2009, as well as today, the clauses
11 and structure of the deal were clear, correct?

12 MS. SIMSON: Objection to form, to
13 the extent you're asking for a legal
14 conclusion or legal opinion.

15 A. I believe an experienced business
16 development professional would find them clear.

17 Q. So it would be irrelevant to your
18 opinion if Brian Goldfus testified that the
19 expected value of the reverse royalty was in
20 the realm of one percent of the overall profits
21 of the deal, correct?

22 MS. SIMSON: Objection to form.
23 Objection to the extent it
24 mischaracterizes1 Brian Goldfus's
25 testimony.

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2 A. If Brian Goldfus said that, it would
3 be irrelevant.

4 Q. Okay. You know what a patent is,
5 right?

6 A. Yes.

7 Q. Are you a named inventor on any
8 United States patents?

9 A. I am not a named inventor on any
10 U.S. patents.

11 Q. You're familiar with the FDA
12 publication known as the Orange Book, correct?

13 MS. SIMSON: Objection to form.

14 A. In a broad sense.

15 Q. I'm not defining orange to mean
16 patents here.

17 A. Yes.

18 Q. Though it is relevant?

19 A. That's a good point. Yeah.

20 (An off-the-record discussion was
21 held at this time.)

22 BY MR. STOPS:

23 Q. You said you were generally familiar
24 with the concept of the Orange Book, right?

25 A. Concept of --

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2 Q. Of the FDA's Orange Book?

3 A. Yes.

4 Q. And how would you access the FDA's
5 Orange Book?

6 A. On the web.

7 Q. Do you know why it's called the
8 Orange Book?

9 A. I have no idea.

10 Q. Orange cover, it was printed.

11 The Orange Book lists patents that
12 relate to specific FDA-approved drug products,
13 right?

14 A. That is correct.

15 Q. And different -- many different
16 types of patents can be listed in the Orange
17 Book, correct?

18 A. That is correct.

19 Q. And you're familiar with the term
20 "compound patents," correct?

21 A. Actually, that is not the way most
22 of us talk about it. Most of us talk about
23 composition of matter patents. Composition of
24 matter. But I am familiar enough that people
25 substitute the word "compound" sometimes.

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2 Q. Composition of matter normally
3 claims the molecular entity itself, correct?

4 A. That is correct.

5 Q. If I claimed a -- a salt form of a
6 molecular entity, would you consider that also
7 to be a composition of matter patent?

8 MS. SIMSON: Objection to form.

9 Also objection to the extent asking for a
10 patent legal opinion.

11 BY MR. STOPS:

12 Q. I'm actually just trying to get
13 terminology straight with you right now.

14 Does a salt patent fall under the
15 umbrella of composition of matter patent in
16 your -- in the way that you use the term?

17 MS. SIMSON: Same objections.

18 A. In the original composition of
19 matter patent, there are salts often claimed.
20 One could patent an additional salt and that
21 would not be the composition of matter patent.

22 Q. Okay. Okay. I could call that a
23 salt patent?

24 A. Yes.

25 Q. Okay. And I think we've just been

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2 in a circle, but salt patents claim salt forms
3 of active ingredients in a pharmaceutical
4 product?

5 MS. SIMSON: Objection to form.

6 A. Correct.

7 Q. So for example, for -- well, let me
8 take a step back.

9 I think we -- I think I established
10 that Novartis sells a product called Jakavi,
11 J-A-K-A-V-I. Incyte sells the same active
12 ingredient as Jakafi, J-A-K-A-F-I?

13 MS. SIMSON: Objection to form.
14 Foundation.

15 A. That is my understanding. Yes.

16 Q. And the active ingredient in both
17 products is the molecule ruxolitinib, correct?
18 And that's spelled R-u-x-o-l-i-t-i-n-i-b?

19 MS. SIMSON: Believe it or not,
20 Eric, she got it right on the transcript
21 the first time. Go Anita!

22 MR. STOPS: Excellent.

23 THE WITNESS: I would call it rux,
24 but just to keep things -- the molecule is
25 the same.

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2 BY MR. STOPS:

3 Q. And Jakavi and Jakafi are the same
4 formulation also, correct?

5 MS. SIMSON: Objection to form.

6 A. I believe that is correct.

7 Q. So in the two products Jakavi and
8 Jakafi, ruxolitinib is in the phosphate salt
9 form, right?

10 MS. SIMSON: Objection to form.

11 A. I don't know.

12 Q. Another type of patent that can be
13 listed in the -- oh, sorry. And salt patents
14 can be listed in the FDA's Orange Book,
15 correct?

16 A. I believe so.

17 Q. Another type of patent that can be
18 listed in the Orange Book is a polymorph
19 patent, correct?

20 MS. SIMSON: Objection to form.

21 Foundation.

22 MR. STOPS: Polymorph.

23 MS. SIMSON: Foundation as well.

24 Go ahead.

25 A. I believe so.

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2 Q. Patents on a drug's formulation can
3 also be listed in the FDA's Orange Book,
4 correct?

5 MS. SIMSON: Objection to form.

6 A. I believe so.

7 MS. SIMSON: Foundation.

8 BY MR. STOPS:

9 Q. And a formulation is generally the
10 way the active ingredient is put into the
11 dosage for the patient, correct?

12 MS. SIMSON: Objection to form.

13 Foundation. Also objecting to the extent
14 asking for a --

15 MR. STOPS: Expert opinion?

16 MS. SIMSON: No. A legal opinion.

17 A. I do think that I might object to
18 your characterization because a dosage can also
19 be a patent, right, a scheduling dose, and that
20 is not the same thing as a formulation.

21 Q. A -- the way the active ingredient
22 is put into a -- a tablet or capsule would be a
23 form -- could be a formulation patent, correct?

24 MS. SIMSON: Objection to form.

25 A. The -- the way it's put into a

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2 tablet or capsule.

3 Q. Sure --

4 A. I think you're --

5 Q. No?

6 A. -- slicing --

7 Q. How would you define a formulation
8 patent?

9 A. I would define it as the description
10 of the other ingredients that end up in the
11 dose. The nonactive ingredients. The
12 excipients.

13 Q. Formulation patents can be listed in
14 the Orange Book, correct?

15 A. I believe so.

16 Q. And I think you just you mentioned
17 another type, dosing regime patents can also be
18 listed in the Orange Book, correct?

19 A. Yes.

20 Q. And there's many different types of
21 formulation patents that can be listed in the
22 Orange Book like extended release, delayed
23 release, immediate release types of
24 formulations, correct?

25 MS. SIMSON: Objection to form.

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2 A. I have seen those sorts of things.

3 Q. And methods-of-use patents can also
4 be listed in the Orange Book, correct?

5 MS. SIMSON: Objection to form.

6 A. I believe so, yes.

7 Q. And an example of a method-of-use
8 patent would be a patent that claimed an
9 approved indication for a drug, correct?

10 MS. SIMSON: Objection to form.

11 Foundation.

12 A. That is an example, yes.

13 Q. Short circuit this a little bit.

14 There is a lot of types of patents
15 that can be listed in the Orange Book, right?

16 MS. SIMSON: Objection to form.

17 A. I believe there are a lot of types
18 of patents, yes.

19 Q. Some patents can be granted to a
20 drug company before a drug is approved by the
21 FDA, right?

22 A. Some types of patents are granted to
23 pharmaceutical companies before FDA approval.

24 Q. And patents can also be applied for
25 and granted after a drug is approved, correct?

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2 A. Normally, the companies do not want
3 the majority of patents to be sought or granted
4 after approval because they want the value of
5 those patents in excluding competition and,
6 therefore, the most important patents are
7 normally sought long before approval.

8 Q. The patents that go out the furthest
9 are often sought and approved after a product
10 is --

11 A. By definition --

12 MS. SIMSON: Objection to form.

13 Vague. And objection to the extent you're
14 asking for a legal opinion.

15 A. The patents that are filed for last
16 certainly last the longest because there is a
17 patent life. Therefore, your question is sort
18 of saying the most recent patents are the last
19 to expire. Yeah.

20 Q. My question was that -- and you're
21 getting to this point I was trying to make,
22 patents that are filed later can be the most
23 valuable patents --

24 A. No, that is not what I said.

25 Q. That was my question. My question

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2 is: Patents that are filed later can be the
3 most important because they last the longest,
4 correct?

5 MS. SIMSON: Objection to form. And
6 objection to the extent asking for a legal
7 opinion.

8 You can answer. Go ahead.

9 A. I think in the industry, it is
10 generally believed that a formulation patent, a
11 alternative salt form, an extended release, all
12 those things are less important than a
13 composition of matter patent, because another
14 formulation can have essentially the same
15 characteristics. The value of the composition
16 of matter patent is that it precludes a party
17 who is not part of the agreement, not part of
18 the licensing agreement, from being able to use
19 the same molecule, and that is much more
20 valuable, much more protection than is a -- a
21 formulation of which there may well be many
22 nearly equivalent formulations. So the last
23 patent need not be the most valuable; generally
24 is not the most valuable.

25 Q. The last -- the last to expire -- --

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2 A. Is not the most valuable.

3 Q. -- can be the most valuable?

4 MS. SIMSON: Objection to form.

5 A. Generally --

6 MS. SIMSON: Vague.

7 A. Is generally not the most valuable.

8 Q. That's not my question.

9 My question was: Patents that are
10 filed later can be the most valuable because
11 they last the longest, correct?

12 MS. SIMSON: Objection to form.

13 A. It is conceivable.

14 Q. I think in -- what you were saying
15 is that there are sometimes infringement issues
16 with patents other than composition of matters
17 patents, correct?

18 MS. SIMSON: Objection to form.

19 Mischaracterizes testimony.

20 A. I think I would leave the
21 definitions of infringement to other people.

22 Q. Okay. Then how about a different
23 way. Regardless of the type of patent, the
24 last-to-expire patent that precludes generic
25 competition is the most valuable, right?

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2 MS. SIMSON: Objection to form.

3 Objection to the extent you're asking for a
4 legal opinion.

5 A. I do think we're getting into some
6 pretty narrow and specific things. I can
7 imagine circumstances where the barrier to that
8 generic entry is weak, and therefore the last
9 patent is not the most valuable.

10 Q. I'm positing that the patent
11 prevents generic competition. So I might --
12 the basis of my question is that in the
13 hypothetical, the patent prevents generic
14 competition. So my question was simply: The
15 last-to-expire patent that protects the product
16 from generic competition is always the most
17 valuable, correct?

18 MS. SIMSON: Objection to form.

19 Incomplete hypothetical.

20 A. It is indeed a hypothetical. I
21 would argue it is generally not the case that
22 the last patent is the most valuable patent.
23 Your hypothetical is not generally the case.
24 So I'm telling you, in general, the truth is,
25 the industry perspective is, that the last

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2 patent is not generally a good barrier to
3 competition.

4 Q. Okay.

5 A. And therefore is not the most
6 valuable. And companies work very, very hard
7 to establish a strong position prior to
8 approval and -- and so it depends.

9 Q. No. I think my question is very
10 simple regardless of what type of patent it is.
11 The last-to-expire patent that prevents generic
12 competition is necessarily the most valuable,
13 right?

14 MS. SIMSON: Objection to form.

15 Asked and answered.

16 A. If -- if it prevents generic
17 competition effectively, it is valuable.

18 Q. And for many drugs, composition of
19 matter patents expire before the drug is
20 commercially viable, correct?

21 MS. SIMSON: Objection to form.

22 A. I don't know how many. I would
23 argue that is probably not correct, but I don't
24 have statistics at hand. I don't have
25 statistics at hand and I don't think that

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2 makes -- I don't think that is consistent with
3 the facts, but I don't have the data to rebut.

4 Q. Okay. A lot of marketed molecules
5 are old, right?

6 MS. SIMSON: Objection to form.
7 Vague.

8 A. A lot of marketed molecules are old.

9 Q. Old molecules won't have composition
10 of matter patents, right?

11 MS. SIMSON: Objection to form.

12 A. Old molecules without composition of
13 matter patents often are cheap.

14 Q. Sorry. Let's go with
15 nongenericized. There's a lot of
16 nongenericized old molecules on the market,
17 correct?

18 MS. SIMSON: Objection to form.

19 A. What's old?

20 Q. Let's make it over 20 years?

21 MS. SIMSON: Same objection. Also
22 vague.

23 A. There aren't that many. Certainly
24 not with substantial sales. There are a few.

25 Q. I gave an example, an example with

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2 pomalidomide.

3 A. I don't remember which pomalidomide
4 is. It's a familiar word but I don't know that
5 one.

6 Q. Invented in the '60s.

7 A. That's certainly not the normal
8 pattern. The average life cycle of a drug is
9 up for about five years and then rolling over
10 and declining and much, much smaller. There
11 are exceptions.

12 Q. So normally -- in your opinion, drug
13 companies would not pursue approval of a drug
14 without a composition of matter patent?

15 MS. SIMSON: Objection to form.

16 A. Companies pursue a drug before
17 composition of matter patents are granted.
18 Many deals are done before composition of
19 matter patents are granted.

20 Q. Actually, I was asking the other
21 way. If a -- if a composition of matter patent
22 had expired already. So for a drug where a
23 composition of matter patent had already
24 expired, drug companies would not pursue
25 approval of such a drug, correct?

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2 MS. SIMSON: Objection to form.

3 A. It depends.

4 Q. Why would drug companies pursue
5 approval of a drug, in your opinion, when the
6 composition of matter patent has already
7 expired?

8 MS. SIMSON: Objection to form.

9 Incomplete hypothetical.

10 A. Speculating, one can imagine a case
11 where a molecule whose composition of matter IP
12 has expired has -- pretty doggone rare, but it
13 has a single source of manufacturing a
14 single -- a highly difficult -- Taxol comes to
15 mind. Taxol is an old generic molecule whose
16 protection was based on its extremely difficult
17 production. That's an extremely rare example.

18 Q. Taxol is albumen-based production?

19 MS. SIMSON: Objection.

20 A. No, not albumen. Taxol before
21 albumen was part -- you're thinking --

22 Q. Abraxane?

23 A. Abraxane, right.

24 And now Taxol, the original and
25 Abraxane, do not have effective barriers to

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2 competition by manufacturing, because people
3 have figured out alternative methods of
4 manufacturing.

5 So there was a period of time when
6 Taxol had effective protection due to its
7 manufacturing patents. That disappeared and
8 that is the criticism of protection by
9 manufacturing patents, similar to the criticism
10 of where there is one formulation, there is
11 another formulation. The one thing that is not
12 readily substitutable is the composition of
13 matter.

14 Q. Are you sure about that for
15 Abraxane?

16 MS. SIMSON: Objection to form.

17 A. Sure about what?

18 Q. That it's now easy to manufacture?

19 A. Compared -- compared -- I will not
20 assert I know everything about Abraxane's
21 manufacturing. Compared to its historic past,
22 I will assert it is much easier to manufacture.
23 I'm not asserting that Abraxane is a cinch to
24 manufacture. I -- I don't have that knowledge.

25 Q. How about methods of use patent?

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2 MS. SIMSON: Objection to form.

3 Vague. With respect to what?

4 A. Yes, what would you like to know
5 about methods to use patent?

6 Q. Are those effective against
7 preventing competition in your mind?

8 MS. SIMSON: Objection to form.

9 A. Generally not.

10 Q. How about a dosing regime patents?

11 MS. SIMSON: Same objection.

12 A. Generally not. There can be
13 exceptions, but generally not, for the same
14 sorts of arguments as for formulation patents.
15 Where there is one dose and schedule, somebody
16 can figure out another dose and schedule,
17 generally.

18 Q. Now, you say generally for all these
19 statements.

20 Do you agree that all of these types
21 of patents other than composition of matter
22 patents can be extremely valuable, correct?

23 MS. SIMSON: Objection to form.

24 A. In certain circumstances other types
25 of patents can be valuable.

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2 Q. And all the types of patents listed
3 in the Orange Book can prevent generic
4 competition?

5 A. In certain --

6 MS. SIMSON: Objection to form.

7 A. In certain circumstances. Not all
8 circumstances.

9 Q. Even after a composition of matter
10 patent issues, parties involved in the
11 development have incentives to obtain
12 additional patents because they can, under
13 certain circumstances, provide value, correct?

14 MS. SIMSON: Objection to form.

15 A. Broadly speaking, yes, parties seek
16 additional patents in hopes they provide value.
17 But a patent can only be obtained when there is
18 something novel, original, not anticipated by
19 those skilled in the art, nonobvious.

20 Q. Patentable subject matter often
21 comes out of development of a pharmaceutical
22 product, correct?

23 MS. SIMSON: Objection to form.

24 A. Research and development.

25 Q. Okay. Patentable subject matter

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2 often comes out of the research and development
3 of a pharmaceutical product, correct?

4 MS. SIMSON: Objection to form.

5 Asked and answered.

6 A. I believe so.

7 Q. And Incyte did obtain additional
8 patents after the agreement was executed,
9 correct?

10 MS. SIMSON: Objection to form.

11 Vague.

12 A. I believe they did obtain additional
13 patents.

14 Q. And you agree that Novartis could
15 have obtained an additional patent to cover
16 Jakafi in the United States, correct?

17 MS. SIMSON: Objection to form.

18 A. I do not know. I don't -- I did not
19 investigate what additional patentable subject
20 matter was novel and nonobvious and available
21 to Novartis.

22 Q. So you do not agree that Novartis
23 could have obtained additional patents covering
24 Jakafi in the United States?

25 MS. SIMSON: Objection to form.

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2 Mischaracterizes testimony and her
3 opinions.

4 A. I said I do not know if they could
5 have.

6 Q. In your rebuttal expert report, you
7 stated, "It is true that Novartis could have
8 obtained an additional patent covering Jakafi
9 in the United States."

10 MS. SIMSON: Objection to form.

11 Also does not repeat -- or does not cover
12 the entirety of the sentence in -- in that
13 report, and I also object to the extent it
14 takes that sentence out of context.

15 A. Can you point me to the specific
16 page, please?

17 Q. Page 13, second paragraph. Rebuttal
18 report. I'm sorry.

19 A. Yeah.

20 Q. And my question was just: You agree
21 that it is true that Novartis could have
22 obtained an additional patent covering Jakafi
23 in the United States, correct?

24 A. Perhaps.

25 MS. SIMSON: I'm going to object to

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2 the extent -- sorry, I'm going to object
3 because it omits the seconds half of the
4 statement in the sentence.

5 MR. STOPS: My question is -- I'll
6 withdraw the question.

7 BY MR. STOPS:

8 Q. My question is just: You agree that
9 it is true that Novartis could have obtained an
10 additional patent covering Jakafi in the United
11 States, correct?

12 MS. SIMSON: Objection to form.

13 A. I am not making a judgment that it
14 was possible for them to obtain a patent.
15 That's might have. It is plausible, but I did
16 not make a judgment as to whether there was
17 patentable subject matter available to
18 Novartis.

19 Q. Understood.

20 A. And, indeed, it did not need to in
21 order to get paid the reverse royalties.

22 Q. Novartis did not obtain any
23 additional patents covering Jakafi in the
24 United States, correct?

25 MS. SIMSON: Objection to the form.

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2 Object to the extent cover -- asks for a
3 legal opinion.

4 A. I believe that is correct.

5 Q. And Incyte did -- did subsequently
6 develop additional patent protection on an
7 extended release formulation of ruxolitinib,
8 correct?

9 MS. SIMSON: Objection to form.

10 A. I don't really know.

11 Q. Novartis could have obtained a
12 patent protection on an extended release
13 formulation of ruxolitinib?

14 MS. SIMSON: Objection to form.

15 A. Again, I cannot judge what
16 patentable information was available to
17 Novartis, what was unobvious, and -- and I
18 cannot assert that it was patentable material
19 for Novartis.

20 Q. Sure. If Incyte could have obtained
21 a patent covering extended release formulation
22 of ruxolitinib, Novartis could have too, right?

23 MS. SIMSON: Objection to form.

24 A. I don't necessarily think that's
25 true. After all, you have to be the inventors.

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2 So if Incyte invented it, then Novartis
3 couldn't obtain the patent.

4 Q. Ah, I was addressing your question
5 of whether such type of patentable subject
6 matter could exist, not the inventorship.

7 MS. SIMSON: Objection. That's not
8 what you asked.

9 BY MR. STOPS:

10 Q. So my question was just: If there
11 was patentable subject matter on an extended
12 release formulation of ruxolitinib, Novartis
13 could have obtained such a patent, correct?

14 MS. SIMSON: Objection to form.
15 Calls for speculation.

16 A. It's an extremely hypothetical
17 situation. And I think it's reaching.

18 Q. Incyte --

19 A. It's not my judgment as to what is
20 patentable by whom.

21 Q. Well, Incyte subsequently obtained
22 additional patent protection claiming a new
23 method of manufacturing ruxolitinib, correct?

24 MS. SIMSON: Objection to form.

25 Foundation.

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2 A. I did not study what the patents
3 they obtained were for.

4 Q. Isn't it relevant to your opinion on
5 whether Novartis could have obtained additional
6 patent protection?

7 MS. SIMSON: Objection to form.
8 Argumentative.

9 A. I was not making a judgment about
10 the feasibility of Novartis obtaining a patent.

11 Q. Okay. You're not offering any
12 opinion on the feasibility of Novartis
13 obtaining additional patent protection on
14 Jakafi in the United States, correct?

15 MS. SIMSON: Objection to form.

16 A. Yes, that is correct.

17 Q. After Jakafi was first approved,
18 Incyte obtained a patent claiming the use of
19 Jakafi to treat GVHD, correct?

20 MS. SIMSON: Objection to form.
21 Foundation.

22 A. I don't know when they obtained
23 patents on GVHD.

24 Q. GVHD is graft versus host disease,
25 correct?

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2 A. That is the definition of GVHD, yes.

3 Q. Novartis could have obtained
4 additional United States patents claiming new
5 uses of Jakafi, correct?

6 MS. SIMSON: Objection to form.

7 A. Same argument. I am not making a
8 judgment of what was feasible to patent.

9 Q. Companies developing pharmaceutical
10 products often apply for and receive patents
11 after drugs are approved, correct?

12 MS. SIMSON: Objection to form.

13 A. I think we previously discussed that
14 they often received them before and sometimes
15 they receive them afterwards.

16 Q. And any patents that Novartis did
17 obtain that claim that -- sorry.

18 Any patents that Novartis did obtain
19 that have claims relating to Jakafi in the
20 United States would be licensed to Incyte under
21 the 2009 agreement, correct?

22 MS. SIMSON: Objection. I'm going
23 to object to form, just because of the
24 vagueness and breadth of the question.

25 A. There were --

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2 MS. SIMSON: Withdrawn. I'm just
3 going to say that I think there might be a
4 word or two missing on the transcript from
5 the court reporter. So I don't know, Eric,
6 if you want to ask the question again,
7 maybe I won't have an objection.

8 A. Could you repeat the question? I'm
9 sorry, it sort of floated away.

10 BY MR. STOPS:

11 Q. Absolutely. Any patents that
12 Novartis did obtain that have claims relating
13 to Jakafi in the United States would be
14 licensed to Incyte under the 2009 agreement,
15 correct?

16 MS. SIMSON: Objection to form, and
17 to the extent you're asking for a legal
18 opinion.

19 A. But I believe the agreement does
20 have cross licensing in the partnership, but
21 there is an IP committee that would have made a
22 decision as to whether Novartis could indeed
23 file those claims.

24 Q. That's not my question. So I think
25 your answer is yes. I'm just --

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2 MS. SIMSON: Objection.

3 BY MR. STOPS:

4 Q. I'm happy to ask it again. I'm not
5 sure I got a yes or a no out of that answer.

6 A. You did not get a yes or a no. You
7 got an answer.

8 Q. Well, the question I don't -- is
9 pretty straightforward. If Novartis obtained a
10 patent with claims relating to Jakafi in the
11 United States, that patent would be licensed to
12 Incyte under the 2009 agreement, correct?

13 A. I believe that is correct.

14 Q. If Novartis had obtained patents on
15 ruxolitinib outside of the United States, those
16 patents would have benefitted Novartis,
17 correct?

18 MS. SIMSON: Objection to form.

19 A. It depends on -- on what they
20 claimed, how strong they were. They might have
21 benefitted Novartis.

22 Q. Sure. You'd agree that if Novartis
23 obtained that patent protection outside the
24 United States on ruxolitinib, those patents
25 potentially would have benefitted Novartis,

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2 correct?

3 A. And would --

4 MS. SIMSON: Objection to form.

5 A. And would have benefitted Incyte by
6 virtue of the royalties paid on sales.

7 Q. Patents are good for everyone,
8 right?

9 MS. SIMSON: Objection to form.

10 A. Broadly speaking, patents are good.

11 Q. You would agree that regardless of
12 which party's interpretation of Section 8.3(c)
13 of the 2009 agreement is correct, both parties
14 are still incentivized to obtain additional
15 patent protection, correct?

16 MS. SIMSON: Objection to form. And
17 calls for speculation.

18 A. It is -- it is a hypothetical. I
19 think both parties want to protect the product
20 and both parties benefit from both parties'
21 sales and success.

22 Q. And regardless of which
23 interpretation of Section 8.3(c) is correct,
24 both parties are incentivized to obtain
25 additional patents, if possible, correct?

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2 MS. SIMSON: Objection to form.

3 A. Regardless --

4 MS. SIMSON: Calls for speculation.

5 A. Regardless of the agreement in most
6 particulars, both parties want the products to
7 be protected.

8 Q. So even leaving the agreement aside,
9 both parties are incentivized to obtain
10 additional patents, correct?

11 MS. SIMSON: Objection to form.

12 Mischaracterizes the testimony.

13 A. I think I have answered that.
14 Pharmaceutical industry likes patents.

15 Q. So both parties would be
16 incentivized to obtain additional patents,
17 correct?

18 MS. SIMSON: Objection to form.

19 Mischaracterizes testimony. Asked and
20 answered multiple times.

21 A. I think I've answered that.

22 Q. And the answer is yes, correct?

23 MS. SIMSON: Objection to form.

24 A. The answer is what I answered.

25 Q. Both parties are incentivized to

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2 obtain additional patents, correct?

3 MS. SIMSON: Objection to form.

4 Asked and answered. You're now badgering
5 the witness.

6 A. I think I have answered the
7 question.

8 Q. What was your answer?

9 MS. SIMSON: She's already given an
10 answer multiple times, Counsel.

11 MR. STOPS: If I want to spend my
12 time asking the question again, I can.

13 THE WITNESS: Okay.

14 MS. SIMSON: I will give the same
15 objection every time, which is asked and
16 answered. And she will say she has
17 answered the question.

18 BY MR. STOPS:

19 Q. Both parties are --

20 MR. STOPS: You're instructing the
21 witness on how to answer. That's completely
22 improper.

23 MS. SIMSON: I have not instructed
24 her not to answer the question.

25 MR. STOPS: You just instructed her

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2 how to answer. That's improper.

3 MS. SIMSON: I have not instructed
4 her how to answer. You can go ahead and
5 ask your question, Counsel.

6 MR. STOPS: And she will say -- you
7 told her exactly what she said --

8 MS. SIMSON: She just said she that
9 answered the question, Counsel.

10 BY MR. STOPS:

11 Q. Both parties to the 2009 agreement
12 are incentivized to obtain additional patent
13 protection, if possible, correct?

14 MS. SIMSON: Objection to form.

15 Asked and answered.

16 A. I believe I have indeed answered
17 this the way I wanted to answer it previously.

18 Q. Please.

19 A. I did.

20 Q. And what's your answer?

21 A. We can read it back if you like.

22 Q. I'm asking you to answer it.

23 MS. SIMSON: Counsel, she's already
24 answered the question. Now you're
25 badgering her.

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2 A. I said the pharmaceutical industry
3 likes patents. Everybody benefits from the
4 sales and success of the drug.

5 Q. You're aware that Novartis did file
6 several United States patent applications
7 concerning ruxolitinib, correct?

8 MS. SIMSON: Objection to form and
9 foundation.

10 A. I'm not sure I am aware of that.

11 Q. Would that be relevant to your
12 opinions?

13 MS. SIMSON: Objection to form.

14 A. Broadly speaking; not particularly.

15 Q. Why did you qualify that with
16 broadly speaking?

17 A. Because your question is so broad
18 that I don't know what it's driving at.

19 Q. I'm just -- if Novartis had obtained
20 several United States patent applications
21 concerning ruxolitinib, would that be relevant
22 to your opinions in this matter?

23 MS. SIMSON: Objection to form.

24 A. My opinion in this matter is that
25 Novartis did not need to obtain patents, and

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2 therefore that opinion does not change.

3 Q. Okay. Are you aware that Novartis
4 has at least six currently pending applications
5 before the United States Patent and Trademark
6 Office that concern ruxolitinib?

7 MS. SIMSON: Objection to form and
8 foundation.

9 A. I am not aware of the specifics.

10 Q. Novartis did not view obtaining
11 patents concerning ruxolitinib as a practical
12 impossibility, did it?

13 MS. SIMSON:

14 A. As a what?

15 MS. SIMSON: Objection to form.

16 Q. Practical improbability.

17 MS. SIMSON: Objection to form.

18 A. I have no idea what Novartis thought
19 about patentability of rux.

20 Q. Where royalties are paid in
21 pharmaceutical licensing contracts, generally
22 they are paid by the licensee to the licensor
23 as compensation for being granted the right to
24 sell -- sorry, granted the right to use the IP,
25 correct?

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2 MS. SIMSON: Objection to form.

3 A. No. Patent -- royalties are paid
4 for many different things. Patents are but one
5 factor. Royalties are paid for contributions,
6 just as are other deal terms. Money in a deal
7 flows for contribution, pays for contributions.
8 Those contributions can be many different
9 forms.

10 Q. I was reading from expert report.

11 A. Show me where you were reading from
12 my expert report.

13 Q. Opening report, Page 11. Second
14 full paragraph, second sentence.

15 A. The --

16 Q. Could you read the sentence, your
17 second sentence of your -- of that paragraph
18 into the record, please?

19 A. "Where royalties are paid in
20 pharmaceutical licensing contracts, generally
21 they are paid by the licensee to the licensor
22 as compensation for being granted the right to
23 use the IP."

24 Q. Thank you.

25 A. Generally, but not always.

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2 Q. Okay. Thank you.

3 A. They are also paid for other
4 contributions. As are all financial terms in a
5 deal.

6 (Pullan Exhibit 1004, July 9, 2009,
7 Term Sheet, marked for identification.)

8 BY MR. STOPS:

9 Q. I'm handing you a document marked as
10 Pullan Exhibit 1004.

11 MS. SIMSON: Dr. Pullan -- well,
12 actually, maybe this is a question for you,
13 Eric. How long do you plan to go on this
14 because we've been going over an hour?

15 MR. STOPS: At the witness's --
16 convenience.

17 THE WITNESS: It would be lovely to
18 take a break. Thank you.

19 MR. MACH: Is this going to be lunch
20 break?

21 MS. SIMSON: No, just a short break.
22 Mean, we can take the lunch break, but I
23 don't think we have to.

24 MR. STOPS: Again, your discretion,
25 Doctor.

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2 THE WITNESS: I'm not hungry yet,
3 but I could use a --

4 MS. SIMSON: Why don't we take a
5 ten-minute break and come back.

6 THE VIDEOGRAPHER: We are going off
7 the record. The time is 11:57 a.m.

8 (Recess.)

9 THE VIDEOGRAPHER: We are back on
10 the record. The time is 12:15 p.m.

11 BY MR. STOPS:

12 Q. Okay. Dr. Pullan, I handed you,
13 right before the break, Pullan Exhibit 1004,
14 correct?

15 A. Yes.

16 Q. And do you recognize Exhibit 1004?

17 A. Yes.

18 Q. It is a July 9, 2009, term sheet,
19 correct?

20 A. Correct.

21 Q. And it's okay if I call this the
22 July 9 term sheet, right?

23 A. Yes.

24 MS. SIMSON: I'm just going to note
25 for the record since there's no cover email

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2 associated with this, it's not clear what
3 the date of this particular document is.
4 It says it at the top, but I'm not sure
5 what version this is.

6 THE WITNESS: Nor am I.

7 MS. SIMSON: Usually the version
8 circulated between the parties, Mr. Stops,
9 had a covering on them, like a red line and
10 a final. So I just wanted to note that.

11 MR. STOPS: Okay. My understanding
12 is this is the only July 9, so I'm not
13 intending to do any games with this
14 document. So let's proceed on this one.

15 BY MR. STOPS:

16 Q. On the -- and you have seen the
17 July 9 term sheet?

18 A. I have seen the July 9 term sheet.
19 I don't have in mind the -- the status of this
20 relative to other term sheets, but...

21 Q. And my understanding is this is the
22 last term sheet.

23 MS. SIMSON: I have no objection to
24 Mr. Stops' characterization of the last
25 term sheet being exchanged between the

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2 parties dated July 9. I just don't know
3 about this particular document, if it's in
4 its completed form of the document family.
5 That's my only objection.

6 MR. STOPS: Okay.

7 BY MR. STOPS:

8 Q. On the first page of the July 9 term
9 sheet, you see a definition for license IP.

10 A. Yes, I do see that.

11 Q. And the term sheet definition of
12 license IP mentions Incyte in the first
13 sentence -- the first line of the definition.

14 Do you see that?

15 A. I'm sorry.

16 Q. In the definition of license IP in
17 the July 9 term sheet, do you see the mention
18 of Incyte in the first line?

19 A. Yes.

20 Q. The July 9 term sheet definition of
21 licensed IP does not use the word Novartis,
22 correct?

23 MS. SIMSON: Objection to form.

24 A. It has as the second part of that
25 definition: Or that is acquired or developed

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2 during the term.

3 Q. We're going to get to that in one
4 second. I just wanted to -- just -- just to
5 establish, it doesn't explicitly say the word
6 Novartis in that definition, correct?

7 A. But that second phrase could indeed
8 imply Novartis.

9 Q. So the -- you agree there is no
10 explicit mention of Novartis in the definition
11 of a licensed IP, correct?

12 (Multiple speakers.)

13 MS. SIMSON: Objection to form.

14 A. The word Novartis does not appear.

15 Q. Your position is that the second
16 clause of the definition encompasses Novartis,
17 correct?

18 MS. SIMSON: Objection to form, only
19 in that it's unclear which definition
20 you're referencing.

21 MR. STOPS: Sure. I'll clarify.

22 BY MR. STOPS:

23 Q. Your position is that the second
24 clause of the licensed IP definition
25 encompasses Novartis, correct?

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2 A. Novartis could acquire or develop or
3 Incyte could acquire or develop additional
4 patents and that would be encompassed in the
5 definition of licensed IP.

6 Q. Okay. If the parties had wanted to
7 explicitly include Novartis, they would have
8 done that, right?

9 MS. SIMSON: Objection to form.

10 Calls for speculation.

11 A. At the time when this term sheet was
12 agreed upon, Novartis had no IP that covered
13 rux and such -- as such, there was no need to
14 include Novartis in the first phrase, and both
15 parties are included in the second phrase. So
16 they didn't need to make explicit the word
17 Novartis in the first phrase because it would
18 make no sense.

19 Q. Novartis didn't have any patents
20 when the deal was signed on November 24, 2009,
21 either, right?

22 MS. SIMSON: Objection to form.

23 Vague.

24 A. Any patents on rux. There were
25 patents that were relevant to the agreement.

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2 MS. SIMSON: You said any patents --

3 A. Period.

4 MS. SIMSON: -- period.

5 A. There certainly were Novartis
6 patents that were relevant to this agreement.
7 Novartis had its own JAK inhibitor, etc.

8 Q. Did Novartis have its own JAK
9 inhibitor when this term sheet was signed?

10 MS. SIMSON: Objection to form.

11 A. I don't know.

12 Q. So did it have any relevant
13 patents --

14 A. Not --

15 Q. -- to the term sheet when the July 9
16 term sheet was exchanged?

17 MS. SIMSON: Objection to form.

18 BY MR. STOPS:

19 Q. Maybe I said that wrong. Give me
20 one second.

21 On July 9, 2009, did Novartis have
22 any relevant patents?

23 MS. SIMSON: Objection to form.

24 A. Relevant to what?

25 Q. Relevant to the potential agreement

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2 between the parties?

3 MS. SIMSON: Objection.

4 A. Perhaps. I don't know.

5 Q. Then why weren't they included?

6 A. They were.

7 Q. No, they weren't. You just told me
8 they weren't.

9 A. Not included on the first phrase.

10 Q. Right. Why weren't they included
11 there?

12 A. I assume it is because it was judged
13 they did not have, at the time, the patent
14 controlled.

15 Q. So then why was it on the final
16 agreement on November 24, 2009?

17 MS. SIMSON: Objection to form.
18 Foundation.

19 A. I would like to see exactly how it
20 is included, because I think that's the
21 specifics. I think that in this collaboration,
22 both parties could have, might have obtained
23 patents that were relevant, and therefore
24 licensed patents became a definition that
25 encompassed both parties.

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2 Q. Right. We're talking first about
3 what patents existed at the time, right, that's
4 the first clause, right?

5 A. Right.

6 Q. Now, your position is that Novartis
7 did not have any relevant patents --

8 A. I am not asserting that.

9 Q. Sorry.

10 A. I don't know with specificity that
11 that is a correct statement. And this is a
12 multi-part agreement.

13 Q. I believe --

14 A. Actually, July 9, if I remember
15 right, this doesn't -- correct me if I'm wrong,
16 but when did Novartis bring in the additional
17 JAK molecules?

18 Q. I'm just asking, and you said --

19 A. And I'm asking whether this term
20 sheet encompasses the additional JAK molecules.
21 Any compounds currently being developed by
22 Novartis or its affiliates as a JAK inhibitor.

23 Q. So I guess, let me ask -- see if
24 you've answered your own question here.

25 Are you asking whether a potential

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2 Novartis JAK molecule was contemplated under
3 the July 9 term sheet?

4 A. I was asking that question.

5 Q. And what's the answer to that
6 question?

7 A. It does imply that Novartis
8 encompassed any compounds currently being
9 developed by Novartis or its affiliates.

10 Q. So Novartis -- under your logic,
11 current Novartis patents should have been
12 included in licensed IP, correct?

13 MS. SIMSON: Objection to form.

14 And --

15 A. This does say "know-how" in licensed
16 IP definition.

17 Q. So under your logic, if your -- if
18 your reasoning was correct, Novartis patents
19 and know-how, current patents and know-how,
20 should have also been included in the licensed
21 IP definition in the July 9 term sheet,
22 correct?

23 MS. SIMSON: Objection to form.

24 Also mischaracterizes her testimony.

25 A. There are licensed grants that we

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2 should look at to see that they were indeed
3 licenses. Let's go back to licensed IP.

4 So a term sheet is necessarily
5 incomplete and this does not seem to discuss
6 the license, for instance, to do research and
7 development. It's only -- the license is
8 defined as: Incyte shall grant to Novartis for
9 collaborative research and development. It
10 does not have, which the final agreement does,
11 that Novartis grants to Incyte the right to do
12 activities, indeed to do activities in each
13 other's territories with the exception of
14 selling.

15 Q. So you're saying there are
16 substantial changes from the term sheet to the
17 final agreement, right?

18 MS. SIMSON: That mischaracterizes
19 her testimony. So I'll object on that
20 basis.

21 A. I'm -- I am saying there are
22 changes. I think the parties understood that
23 there would be additional language that would
24 be the frame. There are, in this agreement,
25 the discussion of -- of some of the who does

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2 what, Incyte to develop responsibilities,
3 Novartis development responsibilities, that
4 imply a license to do those activities.

5 Q. I think we are getting far afield
6 from the question that I had -- I had asked.

7 It was simply: The first sentence
8 of licensed IP does not include any existing
9 patent or know-how owned or controlled by
10 Novartis, correct?

11 A. The word Novartis --

12 MS. SIMSON: Objection to form.

13 A. -- does not appear in the first half
14 of the sentence.

15 Q. And you don't -- you are not taking
16 the position that it should be read into it,
17 correct?

18 MS. SIMSON: Objection to form.

19 A. I am not taking a position on
20 putting words that aren't there in, but I am
21 believing that the parties intended, and the
22 parties went on and put Novartis IP in
23 positions in the final agreement. IP,
24 including know-how and patents.

25 Q. So just focusing on the first half

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2 of the sentence in licensed IP concerning the
3 currently existing patents and know-how, so
4 leaving aside the second clause that deals with
5 later developed or acquired. Okay? Are you
6 with me so far?

7 MS. SIMSON: Objection to form.

8 Q. You agree that the first portion of
9 the sentence neither explicitly mentions
10 Novartis nor should be read to include Novartis
11 patents or know-how, correct?

12 MS. SIMSON: Objection to form and
13 objection to the -- to the extent it's
14 asking for a legal conclusion or opinion.

15 A. And the ultimate decider of what the
16 parties agreed is the execution copy, not the
17 term sheet.

18 Q. No. I'm not asking to interpret the
19 execution agreement right now. I'm just trying
20 to understand what you consider to be within
21 the scope of the first clause of the sentence
22 of the licensed IP definition in the July 9
23 term sheet.

24 So my question is: Do you agree
25 that the first portion of the licensed IP

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2 definition, in the July 9 term sheet,
3 concerning the currently existing patents and
4 know-how, does not explicitly nor implicitly
5 encompass Novartis patents and know-how?

6 MS. SIMSON: Objection to form.

7 A. The precise sentence here does not
8 include Novartis. The agreement implies that
9 Novartis is indeed granting rights to Incyte as
10 Incyte is granting rights, in that they are
11 both granting each other roles and
12 responsibilities in co-development.

13 Q. You were talking about the 2009
14 final agreement --

15 A. No, right here.

16 Q. Oh, I'm sorry. Then please show me.
17 I didn't understand that.

18 A. I'm saying that each party says they
19 have development roles and responsibilities.
20 And Novartis development responsibilities
21 Incyte, Novartis responsibilities, implicit in
22 that structure, is that they must have the
23 right to do those things with the molecule.

24 Q. So that's in the license grant?

25 A. No, it's in--

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2 Q. Let's look at the license grant,
3 which explicitly -- so license grant -- 'hold
4 on. I'll withdraw that.

5 MS. SIMSON: Actually, Mr. Stops,
6 Mr. Stops, you cut off the witness. She
7 was not done with her answer. And you cut
8 her off. Please let her finish her answer.
9 She said, "No, it's," and then you cut her
10 off.

11 MR. STOPS: Oh, I withdrew that
12 question. That was the --

13 MS. SIMSON: You didn't withdraw the
14 question at the time.

15 BY MR. STOPS:

16 Q. Actually, I'm going to clarify. You
17 can make that same answer. I just want to make
18 sure my question was more specific.

19 So the licenses granted or proposed
20 to be granted under the July 9 term sheet are
21 set forth on Page 2 of the July 9 term sheet
22 under the word "license," correct?

23 A. That is a proposed license.

24 Q. And the license here is a license
25 from Incyte to Novartis, correct?

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2 A. Yes, but implicit in the development
3 roles is that there are licenses flowing in
4 both directions permitting the parties to do
5 their collaboration in their respective
6 territories.

7 Q. Okay. So there is an invisible
8 license grant that I'm not seeing here?

9 MS. SIMSON: Objection to form.

10 Mischaracterizes her testimony, and
11 argumentative.

12 A. The parties go on to make that
13 license grant explicit in the final agreement.

14 Q. So the final agreement is changed to
15 have a licensed grant from Novartis to Incyte;
16 is that right?

17 MS. SIMSON: Objection to form.

18 Mischaracterizes testimony.

19 A. The license agreement is definitely
20 fatter than the term sheet. There is a lot of
21 stuff in here that is not in here, right?

22 Q. Okay. So let's just work on
23 licensed IP for a minute. We'll progress
24 through this. The second clause -- sorry, so
25 just -- just so we're clear on the first

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2 clause.

3 The first clause is: "Any patent or
4 proprietary know-how owned or controlled by
5 Incyte as of the effective date," right?

6 A. That is what it says.

7 Q. And is it your position that the
8 licensed IP definition in the July 9 term sheet
9 also includes any patent or proprietary
10 know-how owned or controlled by Novartis or its
11 affiliates as of the effective date?

12 MS. SIMSON: Objection to form.

13 Also object to the extent you're asking for
14 a legal conclusion or opinion.

15 A. I am not implying the words say that
16 Novartis is granting a license. They don't say
17 that --

18 Q. Okay.

19 A. -- in the first half. I am saying
20 that in practical terms, we know that in order
21 to practice the things the rest of the term
22 sheet says, that such licenses must go in both
23 directions. No collaboration would be struck
24 that prohibited the -- for instance, Incyte
25 from doing things because of -- doing things

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2 that would benefit both parties because of IP
3 held by the other party, right?

4 The parties are collaborating. Both
5 parties benefit from the success of the drug.
6 In particular in this case, but broadly, both
7 parties benefit from the success in each
8 other's territories. And because of that, it
9 is -- it is necessary that each party not block
10 the success of the drug.

11 Q. Aren't --

12 A. And permit the activities of the
13 development responsibilities.

14 Q. Aren't there a lot of activities
15 that -- just because an activity could
16 potentially benefit both parties, it doesn't
17 mean that the parties are allowed to do it
18 under the agreement, does it?

19 MS. SIMSON: Objection to form.

20 Mischaracterizes the testimony.

21 A. I certainly never said just because
22 they would benefit, but in this big fat
23 agreement, are licenses granted from both sides
24 in order to execute the collaboration.

25 Q. Would you agree that no final

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2 agreement could be reached that prohibited
3 Incyte from doing things that would benefit
4 both parties?

5 MS. SIMSON: Objection to form.

6 Vague.

7 A. Doing things. It's hard for me to
8 imagine all the variations that things might be
9 and, therefore, it is a little hard to answer
10 that question.

11 Q. Those were your words, Doctor.

12 A. My -- those indeed probably were my
13 words, but what was intended is those things
14 that are described in the roles and
15 responsibilities and the collaboration between
16 the parties. So I was referring to the
17 specifics, not to all things as I interpreted
18 your question.

19 Q. So you're saying, I guess, going --
20 still trying to understand your position on
21 licensed IP.

22 You're saying that there is a
23 necessary implicit inclusion in licensed IP in
24 the July 9 term sheet of any patent or
25 proprietary know-how owned or controlled by

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2 Novartis or its affiliates as of the effective
3 date?

4 MS. SIMSON: Objection to form, and
5 to the extent it mischaracterizes the prior
6 testimony.

7 A. I'm saying there is an implicit
8 structure which ends up being reflected in the
9 final agreement that does indeed -- the
10 implicit structure results in exchange of IP
11 between the two parties in the final agreement;
12 not in the term sheet.

13 Q. Okay. I think I get it. But it's
14 not based on the words of the licensed IP
15 definition?

16 MS. SIMSON: Objection to form.

17 A. It is not based on the first phrase
18 of the licensed IP definition.

19 Q. Right. Okay. Okay. Understood.

20 So the actual words of the licensed
21 IP definition: Any patents or proprietary
22 know-how controlled -- sorry -- any patents or
23 proprietary know-how owned or controlled by
24 Incyte or its affiliates as of the effective
25 date, those words only concern Incyte, right?

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2 MS. SIMSON: Objection to form.

3 A. The word "Novartis" is not in those
4 words.

5 Q. Now let's move on to the second
6 portion of the licensed IP definition, which
7 is, "or that is acquired or developed during
8 the term that is necessary or useful for
9 research, developing, making, using, selling,
10 offering for sale, importing of licensed
11 products."

12 Do you see that?

13 A. Yes.

14 So you interpret the second portion
15 of the sentence to include Novartis based on
16 the passive voice and the lack of an
17 explicit -- the identified actor in the second
18 line, correct?

19 MS. SIMSON: Objection to form.

20 A. Broadly speaking, I think that is
21 correct.

22 Q. Okay. And to be -- so we're very
23 clear on it, where it says, "or that is
24 acquired or developed," those words do not have
25 an explicit actor, correct?

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2 A. Those words do not have an explicit
3 actor.

4 Q. So you read that to include Incyte
5 or Novartis?

6 A. As parties to the agreement.

7 Q. Now, you've reviewed the July 27
8 draft agreement, correct?

9 A. I'm sure I have.

10 Q. It was the first draft agreement
11 exchanged between the parties.

12 A. Okay.

13 Q. Let me mark that.

14 MS. SIMSON: I'm just going to
15 object to that characterization. It was
16 the first draft sent by Incyte to Novartis.

17 MR. STOPS: Just for clarification,
18 are you aware of any other draft agreements
19 that were exchanged before the July 27
20 draft?

21 MS. SIMSON: I was just making clear
22 that it wasn't an exchange on the same day.

23 THE WITNESS: It was one draft.

24 MS. SIMSON: It was just one draft.

25 (Pullan Exhibit 1005, First Draft

1 L. Pullan, Ph.D. - Highly Confidential
2 Agreement dated July 27, 2009, marked for
3 identification.)

4 BY MR. STOPS:

5 Q. Dr. Pullan, I'm handing you what is
6 marked as Pullan Exhibit 1005.

7 A. Thank you.

8 Q. Exhibit 1005 is an Incyte draft, if
9 you look at the top-right corner dated July 27,
10 2009, correct?

11 A. Correct.

12 Q. And --

13 MS. SIMSON: Sorry, one second.

14 BY MR. STOPS:

15 Q. You reviewed this document before,
16 correct?

17 MS. SIMSON: I'm just going to make
18 the same objection I did before that
19 there's no cover email associated with
20 this, so it's -- it's not -- I can't tell
21 whether or not this is the draft that was
22 indeed sent to Novartis on this day or it
23 just has this stamp on the top-right
24 corner. I don't have the full document
25 family here.

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2 MR. STOPS: Okay.

3 BY MR. STOPS:

4 Q. If you would turn to Page 5 of the
5 Exhibit 1005.

6 A. Yes.

7 Q. You see at 1.34 a definition
8 entitled: Incyte IP?

9 A. Yes.

10 Q. And Incyte IP means Incyte know-how
11 and Incyte patent rights, right?

12 A. Yes.

13 Q. It's not your opinion that Incyte IP
14 includes any Novartis know-how or Novartis
15 patent rights, correct?

16 A. That is correct.

17 MS. SIMSON: Objection to form.

18 BY MR. STOPS:

19 Q. Just making sure.

20 The next definition under is:
21 Incyte know-how at 1.35.

22 Do you see that?

23 A. Yes, sir.

24 Q. And Incyte know-how means:
25 "Know-how controlled by Incyte or its

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2 affiliates as of the effective date or that is
3 acquired or developed during the term that's
4 necessary or useful to develop a commercialized
5 licensed product."

6 Do you see that?

7 A. Yes, I do.

8 Q. And Incyte patent rights, at 1.36,
9 means: "Those patent rights controlled by
10 Incyte or its affiliates as of the effective
11 date or that are acquired or developed during
12 the term that are necessary or useful to
13 develop or commercialize." And then it
14 provides a longer definition of cMET licensed
15 compounds and JAK licensed compounds --

16 MS. SIMSON: Slow down, Eric. I'm
17 having trouble understanding you.

18 MR. STOPS: Too much coffee already.

19 BY MR. STOPS:

20 Q. CMET licensed compounds and JAK
21 licensed compounds.

22 Do you see that?

23 MS. SIMSON: I am just going to
24 object. I think it's cMET patent licensed and
25 JAK patent licensed.

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2 THE WITNESS: Both.

3 MS. SIMSON: Are you talking about
4 the underlying terms?

5 BY MR. STOPS:

6 Q. So the "A" -- the -- right after the
7 "A," the cMET licensed compounds, and B, JAK
8 licensed compounds. Then there is more to
9 it -- there's more in there, but it's generally
10 the compounds.

11 Do you see that?

12 A. Yes, I see that.

13 Q. Both the Incyte know-how and Incyte
14 patent rights definitions which are part of the
15 Incyte IP use the same structure as licensed IP
16 in the July 9 term sheet, correct?

17 MS. SIMSON: Objection to form.

18 Also object to the extent asking for a
19 legal opinion or a legal conclusion.

20 A. There is a distinction in that the
21 terms start with the word Incyte. The licensed
22 IP in the term sheet did not start with the
23 word Incyte. It did not say Incyte licensed
24 IP. It said licensed IP.

25 So there is a difference, but the

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2 phrases are in both of these, as the phrases
3 are in the Novartis.

4 Q. Yes. So both the know-how -- Incyte
5 know-how and Incyte patent rights include the
6 second clause: Or that is acquired or
7 developed during the term. Right?

8 A. Actually slightly wrong, one says:
9 That is, and the other one says: That are.

10 Q. Okay. Do you read anything into the
11 difference between those?

12 A. No.

13 Q. Is the lack of an explicit actor and
14 the use of the passive voice in Incyte know-how
15 and Incyte patent rights indicating that those
16 terms include both Incyte and Novartis as the
17 actor?

18 MS. SIMSON: Objection to form.

19 Passive voice or future voice?

20 MR. STOPS: It's not past. It's
21 passive.

22 MS. SIMSON: Oh, I heard past.

23 Sorry, I apologize.

24 A. Again, I'm not issuing a legal
25 opinion, but I think it would be read that

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2 because there's the word Incyte first in the
3 defined term, that one would imply the
4 possessive Incyte patent rights to include
5 Incyte, and not Novartis.

6 Q. So your position is that the
7 distinction between licensed IP in the term
8 sheets and Incyte IP in the July 27 draft
9 agreement is in the name of the defined term,
10 licensed IP versus Incyte IP; is that right?

11 MS. SIMSON: Objection to form.
12 Mischaracterizes her testimony.

13 A. And the concept of the -- the point
14 of these -- the fact that licensed IP is now
15 broken into Novartis IP and Incyte IP.

16 Q. You agree it uses the same structure
17 of the -- that is acquired or developed during
18 the term, correct?

19 MS. SIMSON: Objection to form.
20 Vague by "it."

21 A. I believe I have answered that I can
22 read the words that are acquired in both forms.

23 Q. And they're the same, right?

24 MS. SIMSON: Objection to form.

25 A. Except for is and are.

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2 Q. Okay. In the July 9 term sheet on
3 the front page, the products being licensed are
4 Incyte's cMET program and Incyte's JAK program,
5 correct?

6 MS. SIMSON: Objection to form. I'm
7 not quite sure where you are.

8 MR. STOPS: Maybe I'm saying this
9 wrong.

10 BY MR. STOPS:

11 Q. If you look at the -- I'm looking at
12 the licensed products. It's the third box down
13 on the July 9 term sheet.

14 MS. SIMSON: Sorry, Mr. Stops, are
15 you in the recitals? You said license.
16 That's why I got confused.

17 MR. STOPS: Still talking about the
18 July 9 term sheet, like I said. In the
19 third box down states: Licensed products.

20 Are we all on the same page?

21 MS. SIMSON: I'm with you.

22 BY MR. STOPS:

23 Q. The products that are being licensed
24 are the Incyte cMET program and the JAK --
25 Incyte JAK program.

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2 Do you see that?

3 A. Yes.

4 Q. The licensed products in this
5 definition are Incyte products, correct?

6 MS. SIMSON: Objection to form.

7 A. They appear to be Incyte products,
8 yes.

9 Q. Why does it say licensed products
10 then?

11 MS. SIMSON: Objection to form.

12 Calls for speculation. Also object to the
13 extent asking for a legal opinion or a
14 legal conclusion.

15 A. This is a term sheet; this is the
16 full agreement. There are -- I write term
17 sheets all the time. These are categories as
18 well as predecessors to the defined terms of
19 the final agreement. The parties utilize words
20 in a way that reflect a mutual understanding
21 and are completed in the final agreement.

22 Q. So you're saying licensed IP because
23 you use the word "license" should have actually
24 said Incyte IP in the term sheet?

25 MS. SIMSON: Objection to form --

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2 A. That is not what I said.

3 MS. SIMSON: -- mischaracterizes
4 testimony.

5 BY MR. STOPS:

6 Q. Now, still on the term sheet, your
7 position is that licensed IP was a streamline
8 to exclude know-how during the contract
9 drafting stage, right?

10 MS. SIMSON: Objection to form.
11 Mischaracterizes her testimony and
12 opinions.

13 A. So the exclusion of know-how was
14 necessary for the royalty term because
15 otherwise the royalty term would have no finite
16 end --

17 Q. So in -- sorry. I cut you off.

18 A. -- as know-how has no finite end.

19 Q. So under the July 9 term sheet, the
20 royalty term does not have a finite end,
21 correct?

22 MS. SIMSON: Objection to form. And
23 mischaracterizes the document.

24 MR. STOPS: I'll restate that.

25 BY MR. STOPS:

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2 Q. I thought what you just said was
3 that under the July 9 term sheet it's your
4 opinion that the royalty term does not have a
5 finite end?

6 MS. SIMSON: Mischaracterizes her
7 testimony. I'll object on that basis.

8 A. That is not what I said.

9 Q. Let me read back what you said.
10 Maybe we can make this clear. You said, "So
11 you said the exclusion of know-how was
12 necessary for the royalty term because
13 otherwise the royalty term would have no finite
14 end."

15 MS. SIMSON: And I just want to note
16 for the record, you cut her off, and then
17 she said know-how has no finite end.

18 MR. STOPS: Oh, okay.

19 MS. SIMSON: So you read it back,
20 Counsel. Do you have a question?

21 BY MR. STOPS:

22 Q. My question then is so under the
23 July 9 term sheet, it is your opinion that the
24 royalty term does not have a finite end because
25 know-how doesn't have a finite end; is that

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2 right?

3 MS. SIMSON: That mischaracterizes
4 her opinions, and I'll object on that
5 basis.

6 A. That is not what I said. I said the
7 purpose of splitting out know-how from licensed
8 IP that ends up in the final agreement, the
9 purpose is to make it clear that there is a
10 finite end, but one could also argue that the
11 last-to-expire valid claim refers to patents.
12 And therefore there is a finite end. But still
13 I think the purpose was the clarification that
14 what we're talking about is patents.

15 Q. If you look underneath the royalty
16 term, there is a definition of valid claim,
17 isn't there?

18 A. Yes.

19 MS. SIMSON: Counsel, just to make
20 sure we're looking at the same thing, are
21 you still under the term sheet or the --

22 Q. Under the term sheet under the
23 royalty term, there is a definition of valid
24 claim, correct?

25 A. Yes.

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2 Q. And that definition of valid claim
3 is limited to patents, correct? Claims of
4 patents, correct.

5 A. That is what it says. Patent and
6 patent applications.

7 Q. Yes. So in the royalty term, in the
8 July 9 term sheet where it says, "valid claim
9 within licensed IP," there is no ambiguity
10 there because it only includes patents by
11 virtue of the words "valid claim," correct?

12 MS. SIMSON: Objection to form.

13 Object to the extent you're calling for a
14 legal conclusion or legal opinion.

15 A. I would argue that it is probably
16 not something that people would misinterpret,
17 but that the enhancement of clarity was to say
18 valid claim within the licensed patents.

19 Q. But you are not arguing that there
20 is any lack of clarity of valid claim within
21 licensed IP as including -- potentially
22 including know-how, correct?

23 MS. SIMSON: Objection to form.

24 A. Can you --

25 MS. SIMSON: Yeah.

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2 A. -- rephrase that question because I
3 sort of lost it.

4 Q. Sure. In the royalty term
5 provision in the July 9 term sheet, no one
6 would think that the phrase "valid claim"
7 within licensed IP is referring to know-how,
8 correct.

9 MS. SIMSON: Objection to form.

10 A. Probably we would not claim that a
11 valid claim referred to know-how.

12 Q. So the phrase "valid claim within a
13 licensed IP" only refers to patents and patent
14 applications, correct?

15 MS. SIMSON: Objection to form.

16 A. It seems to refer to patents and
17 patent applications.

18 Q. So now still with the term sheet but
19 now the -- I'll start that again.

20 MS. SIMSON: Sorry, Mr. Stops. I
21 didn't hear what you said.

22 MR. STOPS: I said I'll start that
23 again. I'm sorry.

24 BY MR. STOPS:

25 Q. So I understand your position

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2 correctly, it's your opinion that licensed IP
3 in the July 9 term sheet has the same meaning
4 as licensed patent rights in the 2009 final
5 agreement, correct?

6 A. The same --

7 MS. SIMSON: Objection to form.

8 A. -- intention.

9 Q. What's the difference between -- I
10 said same meaning; you said same intention.
11 I'm just trying to understand what the
12 difference is there.

13 A. I'm not a lawyer. So I'm not trying
14 to parse every word. I'm trying to get at the
15 essence of the agreement.

16 Q. Do they mean something different?

17 MS. SIMSON: Objection to form.

18 Asked and answered.

19 BY MR. STOPS:

20 Q. I mean, that's what this whole case
21 is about, right?

22 MS. SIMSON: Objection to form.

23 A. This case is about what the parties
24 agreed to. It is not a dance of words. It is
25 what the parties agreed to, and that is shaped

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2 by the intended relationship and the roles and
3 responsibilities of the parties and the
4 collaboration.

5 Q. It's what the parties agreed to as
6 reflected in the words of the agreement, right?

7 MS. SIMSON: Objection to form.
8 Argumentative.

9 A. The attempt is, indeed, to capture
10 the intentions in the words.

11 Q. Do parties ever get it wrong?

12 MS. SIMSON: Objection to form.

13 Vague.

14 BY MR. STOPS:

15 Q. Do parties ever fail to properly
16 capture their intent in the words of a final
17 agreement?

18 MS. SIMSON: Objection to form.

19 BY MR. STOPS:

20 Q. You've been involved in a lot of
21 agreements over the years.

22 Do parties ever get it wrong and
23 fail to accurately capture their intent in the
24 words of the agreement?

25 MS. SIMSON: Objection to form.

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2 Argumentative. Object to the extent you're
3 asking for a legal opinion or legal
4 conclusion.

5 Dr. Pullan, you can answer that if
6 you can.

7 A. Parties may sign agreements that
8 fail to be clear or fail to capture items which
9 are necessary to explain how to work together,
10 yes.

11 Q. Is your opinion that parties can
12 have different understandings of the words of
13 agreements at the time the agreement was
14 signed?

15 MS. SIMSON: Objection to form.
16 Mischaracterizes her opinions and her
17 testimony. And object to the extent you're
18 asking for a legal opinion or legal
19 conclusion.

20 A. Parties are a conglomeration of
21 human beings, and we're all fallible. So I
22 would suspect that there could be nuances of
23 variation across different people within a
24 party and across parties.

25 Q. So you would agree that parties

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2 sometimes agree to things that they didn't
3 intend to, correct?

4 MS. SIMSON: Objection to form.
5 Mischaracterizes her testimony.

6 A. I think your other question was
7 better. Do parties always have the same
8 understanding? I think that's the discrepancy
9 that does sometimes occur. Or there's
10 incomplete pieces, incomplete definition of the
11 agreement.

12 Q. So a party could agree to something
13 that they hadn't intended to, correct?

14 A. You just asked me that.

15 MS. SIMSON: Objection to form.

16 A. I said your other phrasing was much
17 superior.

18 Q. Have you ever been involved in an
19 agreement where a client agreed to something
20 that it had not intended to?

21 MS. SIMSON: Objection to form.

22 Vague.

23 I'm also going to instruct
24 Dr. Pullan that to the extent that question
25 is going to have her violate

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2 confidentiality obligations or privilege
3 that she may have to some other party that
4 is not a party to this lawsuit, I would
5 instruct her not to answer. If you're
6 going to, you know, waive privilege, I
7 don't want you to do that with respect to
8 another party and certainly not for
9 Novartis either, but I want you to be very
10 careful when you answer that question with
11 respect to confidentiality and privilege
12 obligations you may owe to others.

13 And in case it's not clear, we would
14 like this transcript marked highly
15 confidential.

16 A. I'm -- I'm cognizant of
17 confidentiality and I appreciate that and do
18 not want to violate my client's
19 confidentiality, but can I think of an example
20 that meets your question, and off the top of my
21 head, I cannot think of an example.

22 Q. Okay. So you said that interpreting
23 an agreement is not a dance of words.

24 What did you mean by that?

25 MS. SIMSON: Objection to form.

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2 A. I probably should not use casual
3 expressions and I apologize for that. But what
4 I mean is that as the parties work together to
5 structure the agreement, it is not about
6 scoring points with words, it's not about
7 beating the other side up.

8 The idea of coming to an agreement
9 is to create a structure that enables the
10 parties to work successfully with each other,
11 such that, again, both can share the success
12 that comes with a successful drug.

13 The ideal agreement is one that you
14 come to agreement and you put it in the drawer
15 and you never look at it again because you work
16 well together, you both know the purposes of
17 what you're doing. That's what the words are
18 supposed to enable you to do. It is not the
19 point to create words on a piece of paper. It
20 is the point to create a relationship that
21 works.

22 Q. Each party, in negotiating an
23 agreement, is acting in their own
24 self-interest, right?

25 MS. SIMSON: Objection to form.

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2 Objection to the extent you're asking for a
3 legal conclusion or legal opinion.

4 A. I'm -- I am trained as a biochemist.

5 I believe all organisms act in their own
6 interest down to the single cell that swims
7 to -- toward food and -- I think that's a
8 general statement of life.

9 Q. So at least up until the execution
10 of an agreement, the parties to the agreement
11 are adversaries, correct?

12 MS. SIMSON: Objection to form.

13 BY MR. STOPS:

14 Q. And hire expensive lawyers, right?

15 MS. SIMSON: Same objection.

16 A. There is no doubt they hire
17 expensive lawyers. All lawyers are expensive.

18 Q. Seriously, the part -- up until --
19 at least up until the point of signing of an
20 agreement, the parties are -- or are, as you
21 said, work in their own self-interests, but
22 they're adversaries, right?

23 MS. SIMSON: Objection to form.

24 A. They are working in their own
25 self-interest, but they are working to become

In fact, I have an example, which I

We

are not adversaries, we are working to try to

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2 become partners, and as such, we do not want to
3 screw the other side over.

4 Q. Both parties are maximizing their
5 return in the agreement, correct?

6 MS. SIMSON: Objection to form.

7 A. Well --

8 MS. SIMSON: And objection to the
9 extent you're asking for a legal opinion
10 and legal conclusion.

11 A. Both sides attempt to maximize
12 return through a successful relationship.

13 Q. So we were talking about whether
14 licensed IP in July 9 term sheet and licensed
15 patent rights in the final agreement had the
16 same meaning, and I think your answer was that
17 they had the same intent; is that accurate?

18 MS. SIMSON: Objection to form, and
19 object to the extent it mischaracterizes
20 prior testimony. I -- I also think your
21 question there is vague.

22 A. Would you like to read me back my
23 answer and I'll -- what the question --

24 Q. Well, I asked you if licensed IP in
25 the July 9 term sheet and licensed patent

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2 rights in the final 2009 agreement had the same
3 meaning, and you -- you said that -- you
4 changed it and said they the same intent; is
5 that correct?

6 A. Correct.

7 MS. SIMSON: Objection to form.

8 A. Because I am not attempting to
9 attribute to myself a legal interpretation.

10 Q. Okay. Can you articulate any
11 difference in the meanings between licensed IP
12 definition in the July 9 term sheet and the
13 licensed patent rights definition in the 2009
14 final agreement?

15 MS. SIMSON: Objection to form and
16 to the extent it you're asking for a legal
17 opinion.

18 A. I'm sorry, my brain is wandering a
19 little. I think I need a cookie break.

20 MR. STOPS: Shall we break for
21 lunch?

22 THE WITNESS: Yes, that would make
23 sense.

24 MS. SIMSON: Do you want to withdraw
25 the question?

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2 MR. STOPS: I guess I did have a
3 question pending there.

4 BY MR. STOPS:

5 Q. Can you answer that question and
6 then we'll -- we'll break?

7 A. Can you say it one more time. I'm
8 sorry. I just sort of reached this point my
9 brain started going --

10 MS. SIMSON: It's past 1:00. You're
11 probably hungry.

12 BY MR. STOPS:

13 Q. So the question was just, can you
14 articulate any difference in the meanings of
15 licensed IP in the July 9 term sheet and
16 licensed patent rights in the final -- final
17 agreement?

18 MS. SIMSON: Objection to form.
19 Object to the extent you're asking for a
20 legal opinion or legal conclusion. Also I
21 think the question is vague.

22 A. So if you are asking me do I think
23 they serve the same intent, I think that is
24 true.

25 Q. Okay. I wasn't asking you that.

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2 A. And --

3 Q. I was asking if you can articulate
4 any difference in the meanings between them?

5 MS. SIMSON: Same objections.

6 A. I think I cannot articulate any
7 important difference. I'm not trying to be a
8 lawyer.

9 MR. STOPS: Okay. Let's break.

10 THE VIDEOGRAPHER: The time is
11 1:13 p.m. We're going off the record.

12 (Luncheon recess.)

13 THE VIDEOGRAPHER: We are back on
14 the record. The time is 2:13 p.m.

15 BY MR. STOPS:

16 Q. Dr. Pullan, I'm handing you a
17 document marked as Exhibit 1006.

18 (Pullan Exhibit 1006,
19 Incyte-Innovent Agreement, marked for
20 identification.)

21 BY MR. STOPS:

22 Q. I believe this is the Incyte
23 Innovent agreement that you referred to in your
24 rebuttal report that was in Dr. Rao's opening
25 report; is that correct?

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2 A. That is correct.

3 Q. And so let's go to the royalty
4 provisions in this. It's Page 36, Section 7.3.

5 And you reviewed this agreement,
6 correct?

7 A. Yes, I did review this agreement.

8 Q. So in Section 7.3.1 it's titled:
9 Generally. This sets forth the existence of
10 royalties from Innovent to Incyte; is that
11 correct?

12 A. Let me --

13 Q. Yes.

14 A. Yes, that appears to be correct.

15 Q. And as far as I'm reading it, this
16 seems to be one-way royalties, Innovent to
17 Incyte?

18 MS. SIMSON: And, Dr. Pullan, in
19 order to answer that question if you need
20 to take another look at the agreement, feel
21 free to do so.

22 THE WITNESS: Right.

23 A. As I remember there is combination
24 products, joint IP, things like that. So there
25 are royalties potentially in both directions,

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2 as I remember.

3 Q. Contingent royalties --
4 (Multiple speakers.)

5 A. Contingent --

6 MS. SIMSON: Objection to form.

7 Q. That's fine. It doesn't matter for
8 the next question. The Section 7.3.2 on
9 Page 37 of Exhibit 1006, there is a section
10 entitled: Royalty terms.

11 Do you see that?

12 A. Yes.

13 Q. And the royalty terms sets forth the
14 term of the royalties, right?

15 And one of the potential end
16 conditions of the royalty term is Section A:
17 Expiration of a valid claim covering such
18 licensed products in such region.

19 Do you see that?

20 A. I see that.

21 Q. So this doesn't -- in this it
22 doesn't specify any parties' patent rights
23 here.

24 The term is just valid claim,
25 correct?

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2 MS. SIMSON: Objection to form.

3 A. The --

4 MS. SIMSON: And object to the
5 extent you're asking for a legal opinion or
6 legal conclusion.

7 A. It does say, "expiration of a valid
8 claim covering such licensed product."

9 Q. And valid claim is capitalized
10 indicating that it's a defined term, right?

11 A. Correct.

12 Q. So the definition section is at the
13 end of this one?

14 A. Oh.

15 Q. So let's, I guess, flip to the
16 definition section, if you would. I guess,
17 first just if you look at Page 67 -- tell me
18 when you reach there.

19 A. I'm at 67.

20 Q. And you see there is a definition
21 that defines "INCY patent"?

22 A. Yes.

23 Q. You understand that to be Incyte
24 patents, correct?

25 A. Correct.

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2 Q. And on the next page, 68, there is
3 an "INNO patent" definition?

4 A. Yes.

5 Q. Which, I believe, corresponds to
6 Innovent patents, correct?

7 A. I believe that to be true.

8 Q. Then the operative term in that
9 royalty provision is valid claim, and that
10 appears on Page 73?

11 A. Okay.

12 Q. And take a look at this and you
13 don't have to read it out loud. I do not -- I
14 do not see any specification of either parties
15 or any parties' patents by definition in this
16 section, like in other words, I don't see it
17 specifying Incyte patents or Innovent patents?

18 A. In this --

19 MS. SIMSON: Objection to form.

20 BY MR. STOPS:

21 Q. Correct. In the definition of valid
22 claim. I just want you to confirm that.

23 A. Confirmed.

24 Q. So with respect to the royalty term
25 provision, that depends upon -- on expiration

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2 of a valid claim covering such licensed product
3 in such region, whose patents does it depend on
4 in your opinion?

5 MS. SIMSON: Objection to form.

6 Objection to the extent you're asking for a
7 legal conclusion or a legal opinion.

8 A. So as I remember, there is the
9 potential for a licensed product to be a
10 combination product, which means, it could be
11 either parties' patents.

12 Q. Okay. So does it matter which
13 product that we're referring to under the
14 agreement, which way -- sorry.

15 Does which product is being sold
16 change which parties' patents are relevant to
17 that termination provision?

18 MS. SIMSON: Objection to form.

19 Objection to the extent you're asking for a
20 legal conclusion or a legal opinion.

21 A. So it matters whose patents cover
22 the product only to the extent that that's
23 where the patents come from. The royalty term
24 is not dependent in this agreement on whose
25 patents are being applied.

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2 Q. So, hypothetically, assume both
3 parties had patents that covered the product,
4 the royalty term would go out until the last of
5 either parties?

6 MS. SIMSON: Objection to form.

7 Objection to the extent you're asking for a
8 legal conclusion or a legal opinion. And
9 incomplete hypothetical.

10 A. As a hypothetical, it seems that
11 the -- if there were patents from both parties,
12 it would go until the last valid claim of those
13 patents.

14 Q. Okay. And that's because the valid
15 claim definition doesn't specify a party?

16 MS. SIMSON: Objection to form.

17 Objection to the extent you're asking for a
18 legal conclusion or a legal opinion.

19 A. Thank you.

20 That, and the royalty term
21 definition also doesn't say that it is a valid
22 claim of a particular parties.

23 Q. Right. So you would have a
24 different opinion if it said a valid claim of
25 Incyte's patents?

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2 A. Correct.

3 Q. So the -- the final agreement
4 between Incyte and Novartis, the -- the final
5 agreement between Incyte and Novartis, the 2009
6 agreement, could have worded things like the
7 Innovent agreement?

8 MS. SIMSON: Objection to form.

9 Calls for speculation. Object to the
10 extent you're asking for a legal conclusion
11 or a legal opinion.

12 A. Could have, would have, should have,
13 maybe, who knows, but what matters is what they
14 didn't say, and what the parties intended.

15 MS. SIMSON: I don't think she was
16 done with her answer.

17 Q. I'm sorry.

18 A. I think the parties' intent was for
19 a collaboration and for the -- the benefit to
20 flow to both parties based on both parties'
21 contributions.

22 Q. Now, you just interpreted the
23 Innovent agreement based on the words of the
24 agreement itself?

25 MS. SIMSON: Objection to form.

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2 Objection to the extent calling for a legal
3 conclusion or legal opinion.

4 A. I brought to the agreement my
5 knowledge of how agreements are generally
6 structured. These things can be hard to read
7 if you don't bring that context, right? You
8 need to understand what a combination product
9 is, and that it could represent IP from either
10 party. There are lots of words, and it's much
11 easier to read the words and get what they mean
12 if you're bringing knowledge and perspective to
13 the words.

14 Q. In the Innovent agreement, do you
15 know if the parties intended that the royalties
16 would only be paid as long as Incyte had
17 patents?

18 MS. SIMSON: Objection to form.

19 Call for speculation. Object to the extent
20 you're asking for a legal conclusion or
21 legal opinion.

22 A. I believe the parties agreed that
23 there would be royalties as long as there were
24 patents covering the product; patents, period.

25 Q. And you're basing that on the words

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2 of the agreement?

3 MS. SIMSON: Objection to form.

4 Asked and answered.

5 A. The words of the agreement and the
6 knowledge that there was a complex relationship
7 with the parties bringing multiple molecules,
8 multiple contributions, and mutually
9 benefitting.

10 Q. And you're reading that into the
11 agreement, right?

12 MS. SIMSON: Objection to form.

13 A. I'm not reading it into the
14 agreement.

15 Q. I'm sorry. That's based on your
16 reading of the agreement?

17 MS. SIMSON: Same objection. And
18 asked and answered.

19 A. It is in the agreement.

20 Q. And you don't know if the parties
21 intended something different in actuality,
22 right?

23 MS. SIMSON: Objection to form. And
24 object to the extent you're calling for a
25 legal conclusion or legal opinion.

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2 A. I have no reason to suspect they
3 intended something other than what resulted in
4 the agreement. I have no access to their term
5 sheet history, the internal documentation.
6 This is the only piece of evidence I have.

7 Q. And yet you're able to interpret the
8 agreement, right?

9 MS. SIMSON: Objection to form.

10 A. With difficulty. It's hard work.

11 Q. So let's go to the 2009
12 Incyte-Novartis agreement.

13 MS. SIMSON: Can you identify which
14 exhibit that is for the witness?

15 Q. 1001, please. And you can put the
16 other documents to the side if you want to get
17 them out of your way. My next set of questions
18 is on the agreement itself.

19 So if you would turn to the royalty
20 section of Exhibit 1001 that is on page --
21 starts on Page 56.

22 A. Yes.

23 Q. And you see there is a Section 8.3
24 entitled: Royalties?

25 A. Yes.

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2 Q. I guess I'll start at the top.

3 Section 8.3(a) are Novartis royalties to

4 Incyte, right?

5 A. That is correct.

6 Q. And 8.3(a)(i), Roman -- lower case

7 Roman i, is cMET license products, right?

8 A. That is correct.

9 Q. And Section 8.3(a)(i) is a royalty

10 from Novartis to Incyte based on sales of

11 cMET-licensed products, correct?

12 A. That is correct.

13 Q. The royalty payments under

14 Section 8.3(a)(i) start on the first commercial

15 sale of each cMET licensed product, correct?

16 MS. SIMSON: Objection to form.

17 Objection to the extent you're asking for a

18 legal conclusion or legal opinion.

19 A. I concur.

20 Q. And the royalty payments under

21 Section 8.3(a)(i) end based on the royalty term

22 provisions of Section 8.3(c), correct?

23 A. I believe that is correct.

24 Q. The Novartis territory for cMET

25 products is the entire world, correct?

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2 A. Correct.

3 Q. And just for completeness, that is
4 set forth in Section 1.82 on Page 12, correct?

5 A. I'll get there. Just a second.
6 Yes.

7 Q. So flipping back to the royalty --
8 royalty provisions. The next Section 8.3(a)(i)
9 is the royalty from Novartis to Incyte based on
10 sales of JAK-licensed products, correct?

11 A. Yes.

12 Q. And the royalty payments under
13 Section 8.3(a)(i) also start on the first
14 commercial sale of each JAK-licensed product,
15 correct?

16 A. On the net sales.

17 Q. Sorry. The start date for the
18 royalties under 8.3(a)(i) is the first
19 commercial sale, correct?

20 A. I don't actually see the words first
21 commercial sale.

22 Q. I think you have to read that in
23 conjunction with the royalty term of 8.3(c).

24 A. Right. Yes, from the date of the
25 first commercial sale, yes.

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2 Q. So the royalties under 8.3(a)(i)
3 start on the first commercial sale of each
4 JAK-licensed product, correct?

5 A. Yes.

6 Q. And the royalty payments under
7 8.3(a)(i) end based on the royalty term
8 provisions of 8.3(c), correct?

9 A. Correct.

10 Q. The Novartis territory for
11 JAK-licensed products is the entire world
12 except for the United States and its
13 territories, right?

14 MS. SIMSON: Objection to form.

15 A. The entire world other than the
16 Incyte territory.

17 Q. Which -- okay. And if we look at
18 section --

19 A. 1.48.

20 Q. Thank you -- 1.48, the Incyte
21 territory is the United States of America, its
22 territories, and possessions, correct?

23 A. Correct.

24 Q. So under Section 1.82, which is the
25 Novartis territory, why isn't the Novartis

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2 territory for JAK-licensed products the entire
3 world under the agreement?

4 MS. SIMSON: Objection to form.

5 Calls for speculation. Also object to the
6 extent you're asking for a legal conclusion
7 or legal opinions.

8 A. Presumably, because the parties
9 agreed it was not the entire world.

10 Q. Sure. 1.82 specifies that
11 Novartis's territory for JAK-licensed products
12 is the entire world except for the Incyte
13 territory, correct?

14 A. That is what it says.

15 Q. Why don't we read Section 1.82 as
16 simultaneously the entire world and the entire
17 world other than the Incyte territory?

18 MS. SIMSON: Objection to form.

19 A. I'm at a loss to answer that
20 question.

21 Q. Grammatically speaking, it says in
22 it at one point, "the entire world and the
23 entire world other than the Incyte territory."

24 A. I see. There is a semicolon. There
25 is an A and a B and there is a reference to

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2 cMET and JAK-licensed products. So there is a
3 distinction between the two parties as
4 illustrated by a number of points.

5 Q. So Section 1.82 is directional,
6 correct?

7 MS. SIMSON: Objection to form.
8 Object to the extent you're asking for a
9 legal conclusion or a legal opinion.

10 A. And I don't even know what it means
11 to say directional.

12 Q. When you're talking about cMET
13 license products, you look to the entire world.

14 When you talk about JAK-licensed
15 products you look to the entire world other
16 than the Incyte territory, right?

17 MS. SIMSON: Objection to form.

18 A. Those are the words, but I don't
19 know what directional means.

20 MS. SIMSON: Same objection.

21 BY MR. STOPS:

22 Q. How would you define the structure
23 of Section 1.82?

24 MS. SIMSON: Objection to form.

25 Object to the extent asking for a legal

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2 conclusion or a legal opinion.

3 A. I think I would say it -- it means
4 Novartis territory for cMET is worldwide;
5 Novartis territory for JAK is worldwide minus
6 the U.S.

7 Q. Would you consider this to be a --
8 you would agree that this is a two-part
9 definition?

10 MS. SIMSON: Objection to form.
11 Objection to the extent you're asking for a
12 legal conclusion or legal opinion.

13 A. There is an A and a B.

14 Q. So this -- the Section 1.82 has a --
15 has two parts, one part for cMET-licensed
16 products and the other part for JAK-licensed
17 products, correct?

18 MS. SIMSON: Same objections.

19 A. Answered.

20 Q. It's a different question.

21 A. Not much.

22 Q. So the Section 1.82 for Novartis
23 territory has one part for Novartis's territory
24 for cMET-licensed products and one part for
25 Novartis's territory for JAK-licensed products

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2 correct?

3 MS. SIMSON: Objection to form.

4 Objection to the extent you're asking for a
5 legal conclusion or legal opinion. Also
6 asked and answered.

7 A. There are two parts.

8 Q. And that you consider this to be a
9 conditional definition because it depends on
10 what the starting condition is, right?

11 MS. SIMSON: Objection to form.

12 A. I don't know.

13 MS. SIMSON: Objection to the extent
14 you're asking for a legal conclusion or legal
15 opinion.

16 BY MR. STOPS:

17 Q. In the condition of Novartis's
18 territory for cMET-licensed products, you look
19 to the entire world.

20 For the condition of the Novartis's
21 territory for JAK-licensed products you look to
22 the entire world other than the Incyte
23 territory, correct?

24 MS. SIMSON: Objection to form.

25 Objection to the extent asking for a legal

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2 conclusion or legal opinion. Also asked
3 and answered.

4 A. I don't see that that's conditional
5 in my use of the word conditional. So I'm not
6 sure what, what you're driving at.

7 Q. If you're looking to figure out what
8 Novartis's territory is for cMET-licensed
9 products, you look in Section A or B?

10 A. Where it says cMET, I looked in
11 Section A.

12 Q. If you're looking for Novartis's
13 territory with respect to JAK-licensed
14 products?

15 A. I look where it says JAK-licensed
16 products.

17 Q. So going back to the royalty
18 provisions in 8.3, Section 8.3(b) is Incyte
19 royalties to Novartis, right?

20 A. Yes.

21 Q. Section 8.3(b)(i) is the royalty
22 from Incyte to Novartis based on sales of a JAK
23 product in the United States, correct?

24 A. That is correct.

25 Q. And the royalty payments under

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2 Section 8.3(b)(i) do not start on the first
3 commercial sale of the U.S. JAK product,
4 correct?

5 MS. SIMSON: Objection to form.

6 Objection to the extent you're asking for a
7 legal conclusion or legal opinion.

8 A. On what basis do you make that
9 point?

10 Q. Oh, Section 8.3(b)(i), royalty start
11 only if Novartis --

12 (Multiple speakers.)

13 Q. Section 8.3(b)(i) royalty start only
14 if Novartis obtains reimbursement and pricing
15 approval for the first indication of a
16 JAK-licensed product in at least three of the
17 EU major market countries, correct?

18 A. That is what it says. And it says
19 that because they wanted not to be paying out
20 when they weren't receiving. The parties
21 wanted to align their payments and it was in
22 Incyte's interest to delay paying out when they
23 were likely to have approval first and did have
24 approval first in the U.S.

25 Q. Okay. So you agree that the royalty

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2 payments under Section 8.3(b)(i) do not start
3 on the first commercial sale of JAK products by
4 Incyte, correct?

5 MS. SIMSON: Objection to form.

6 A. Because that's what it says, yes.

7 Q. Okay. And reimbursement and pricing
8 approval is not the same as approval by a
9 European country regulatory agency to sell a
10 JAK-licensed product, correct?

11 MS. SIMSON: Objection to form.

12 A. Pharmaceutical companies do not sell
13 until they have pricing approval in -- in most
14 countries of Europe. So the two are conjoined.
15 And the first commercial sale occurs after both
16 events. The United States does not have, so
17 far, pricing agreement.

18 Q. There is no necessary linkage
19 between reimbursement and pricing approval?
20 They are -- sorry. They are two separate
21 things. Approval to sell a drug and
22 reimbursement and pricing approval are two
23 separated things, correct?

24 MS. SIMSON: Objection to form.

25 A. They're pretty linked, meaning if

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2 you don't have a price, you can't sell.

3 Q. You can't get -- you can't get
4 reimbursement?

5 A. You can't get reimbursed.

6 Q. You can sell; you can't get
7 reimbursement?

8 A. You can't get much in the way of
9 sales when it's governmental healthcare because
10 that's who is paying for the vast majority of
11 sales.

12 Q. Some sales take place outside of the
13 reimbursement scheme, correct?

14 MS. SIMSON: Objection to form.

15 A. Some sales take place by private
16 payers outside government-supported healthcare,
17 but the majority of sales take place, in
18 Europe, in government-supported healthcare.

19 Q. If Novartis had never obtained --
20 let's look at this, say, more forward looking.

21 If Novartis never obtained
22 reimbursement and pricing approval for the
23 first indication of a JAK-licensed product in
24 at least three major European market countries,
25 the Section 8.3(b)(i) royalty would never

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2 begin, correct?

3 MS. SIMSON: Objection to form.

4 A. That's not what happened, but it is
5 not beyond the realm of possibility.

6 Q. You don't cite any other agreements
7 that require reimbursement and pricing approval
8 in three-out-of-five major European countries
9 as a trigger for royalty payments, correct?

10 MS. SIMSON: Objection to form
11 European.

12 A. I didn't try to cite any other
13 agreements. Without a doubt, I could find some
14 more clauses in other agreements.

15 Q. My question is just: You didn't
16 cite any in your report, correct?

17 MS. SIMSON: Objection to form.

18 Asked and answered, argumentative.

19 A. That is correct.

20 Q. And the parties actually had to
21 amend the 2009 agreement in 2014 to remove the
22 requirement that Novartis obtain approval in
23 three-out-of-five major market European
24 countries, correct?

25 MS. SIMSON: Objection to form.

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2 A. Parties --

3 MS. SIMSON: Objection to the
4 characterization of that amendment to the
5 agreement.

6 A. The parties chose to amend the
7 agreement, not had to amend it.

8 Q. The parties agreed to amend the
9 agreement, correct?

10 A. The parties amended the agreement.

11 Q. And at the point of the amendment,
12 Novartis had not obtained approval in -- strike
13 that.

14 The parties had -- at the time of
15 that amendment, Novartis had not received
16 reimbursement and pricing approval in three of
17 five major market European countries, correct?

18 MS. SIMSON: Objection to form.
19 Foundation.

20 A. If you show me the amendment, I
21 believe there were trades for such amendment,
22 meaning the parties negotiated and each side
23 gave something.

24 Q. Right. Had Novartis obtained
25 approval in three of five major European

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2 countries, they wouldn't have had to enter into
3 agreement -- an amendment to the agreement with
4 respect to that clause, correct?

5 MS. SIMSON: Objection to form.

6 Objection to the extent you're asking for a
7 legal conclusion or a legal opinion.

8 A. Had Incyte not wanted something in
9 exchange, they wouldn't have had to enter the
10 agreement either. This was a mutually
11 negotiated amendment. It was not merely
12 Novartis.

13 Q. I'm not suggesting it was charity or
14 a handout. My point is just that had Novartis
15 already achieved reimbursement and pricing
16 approval in three of five major market European
17 countries, it wouldn't have had to enter the
18 amendment on that point, correct?

19 MS. SIMSON: Same objections. And
20 also asked and answered.

21 A. As to that tiny piece, if they had
22 already done it, there would be no point in
23 asking to remove it. But that's not all that
24 amendment was about.

25 Q. The Section 8.3(b)(i) royalties,

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2 like all the royalties under the 2009 agreement
3 are based on net sales of the product, correct?

4 A. Yes.

5 Q. And if there are no sales, there's
6 no royalty, right?

7 MS. SIMSON: Objection to form.

8 Objection to the extent you're asking for a
9 legal conclusion or legal opinion.

10 A. If royalties are on sales, there
11 have to be sales for there to be royalties.

12 Q. Royalty payments under
13 Section 8.3(b)(i) end based on the royalty term
14 provisions of 8.3(c), correct?

15 A. Correct.

16 Q. 8.3(b)(ii) is -- sets forth a
17 royalty from Incyte to Novartis based on sales
18 of JAK products in topical -- sorry -- yes,
19 topical formulations and ophthalmic
20 indications, correct?

21 MS. SIMSON: Objection to form.

22 Mischaracterizes 8.3(b)(ii). Also omits
23 the language that's: Covered by Novartis
24 improvements, and other language in that
25 provision.

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2 A. It does indeed say: Covered by
3 Novartis improvements for the topical
4 formulation outside the JAK field, and a
5 non-oral formulation for ophthalmic
6 indications.

7 Q. And the royalty payments under
8 Section 8.3(b)(ii) do not start on the first
9 commercial sale of topical or ophthalmic --
10 ophthalmically indicated products, correct?

11 MS. SIMSON: Objection to form.
12 Mischaracterizes the document.

13 A. If the royalties are on sales, they
14 start when there are sales.

15 Q. The triggering event for the
16 existence of sales is the Novartis
17 improvements, as you mentioned, correct?

18 MS. SIMSON: Objection to form.
19 And -- and objection to the extent you're
20 asking for a legal conclusion or legal
21 opinion.

22 A. It is a necessary condition that
23 they be covered by Novartis improvements, but
24 they still start when there are sales.

25 Q. Well, they start when there are

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2 sales and Novartis improvements, right? Two
3 conditions.

4 MS. SIMSON: Objection to form.

5 A. They start when there are sales, but
6 it is necessary that there be covered by
7 Novartis improvements.

8 Q. If there were sales and no Novartis
9 improvement, are there royalties?

10 A. I never said that.

11 MS. SIMSON: Objection to the form.

12 Asked and answered.

13 BY MR. STOPS:

14 Q. Well, let's make sure we are clear.

15 If there are sales, but no Novartis
16 improvements, are there royalties under
17 Section 8.3(b)(ii)?

18 MS. SIMSON: Objection to form.

19 A. You asked about start.

20 Q. Right.

21 A. They start when there are sales, but
22 there would not exist at all if there were not
23 covered by Novartis improvements .

24 Q. If there are Novartis improvements,
25 but no sales, are there royalties?

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2 A. No.

3 Q. So both sales and Novartis
4 improvements are necessary for there to be
5 royalties, right?

6 MS. SIMSON: Objection to form.

7 Argumentative. Asked and answered.

8 A. I indeed answered that. You asked
9 specifically when they start and they start on
10 sales, that's what you asked, is when they
11 start.

12 Q. There could be sales, but no
13 royalties, right?

14 A. That's true, I said that.

15 Q. Okay. Same thing with the previous
16 Section 8.3(b)(i).

17 There needs to be sales and approval
18 in three of five EU countries, right?

19 MS. SIMSON: Objection to form.

20 Also ignores Amendment No. 3 to the
21 agreement.

22 BY MR. STOPS:

23 Q. Under the agreement as executed in
24 2009, there needs to be both sales and approval
25 in three EU countries for royalties to exist

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2 under 8.3(b)(i), correct?

3 MS. SIMSON: Objection to form.
4 Ignores Amendment No. 3 of the agreement.

5 A. Ignoring the amendment, that would
6 be a correct statement.

7 Q. Okay. So sales under 8.3(b)(i)
8 don't start until there are both sales and
9 approval in three to five EU countries, right?

10 MS. SIMSON: Same objections. And
11 asked and answered.

12 A. I'd say I answered that, yes.

13 Q. And royalty payments under
14 8.3(b)(ii) and based on the royalty term
15 provisions in Section 8.3(c), correct?

16 A. Yes. There is a single royalty term
17 provision for all royalties under the
18 agreement.

19 Q. So --

20 MS. SIMSON: Counsel, if you're
21 going to pull another exhibit, would you
22 mind letting us know what it is.

23 MR. STOPS: That's fine. I'm just
24 making sure I have the right document.
25 I'll tell you momentarily.

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2 BY MR. STOPS:

3 Q. Okay. So on Page 12 of your
4 rebuttal report you state in the middle of the
5 first large bulleted section: "If the receipt
6 of a royalty for a particular time frame was
7 conditioned on undertaking an additional step,
8 like Novartis obtaining a patent, that would be
9 clearly reflected. There is no such
10 contingency reflected in Section 8.3(b)(i) or
11 Section 8.3(c)."

12 Now, that's incorrect, right?

13 MS. SIMSON: Objection to form.

14 A. I do not believe what I've said here
15 is incorrect. There is no such contingency
16 like expressly tied to Novartis improvements.

17 Q. Well, under the agreement as signed
18 on November 24, 2009, Novartis was required to
19 obtain reimbursement and pricing approval in at
20 least three of the EU major market countries,
21 correct?

22 A. There is --

23 MS. SIMSON: Objection to form.

24 A. There is no contingency parallel to
25 if covered by Novartis improvements.

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2 Q. There is a contingency that Novartis
3 needs to obtain pricing and reimbursement
4 approval in at least three EU major market
5 countries?

6 A. But that's not the --

7 MS. SIMSON: Objection to form.

8 Ignores Amendment No. 3 to the agreement.

9 Asked and answered. Argumentative.

10 A. There is no parallel contingency to
11 that which is described in little ii.

12 Q. Why is that not a contingency in
13 section --

14 A. I didn't say it wasn't a
15 contingency. I said there was no such parallel
16 contingency.

17 Q. Then I am very confused about your
18 testimony. Could you explain?

19 A. Good, because I've been confused
20 about your questions a lot, so it's about time.
21 Turn about's fair play.

22 Q. Would you explain for me?

23 A. This says with respect to the one
24 percent royalty, it is expressly tied to
25 Novartis improvements. The general royalty

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2 from Incyte to Novartis is not expressly tied
3 to Novartis obtaining a patent. It is not tied
4 expressly to Novartis improvements.

5 Q. No, it's tied to reimbursement of
6 pricing approval in three of five European
7 countries --

8 A. I acknowledge that.

9 MS. SIMSON: Objection.

10 BY MR. STOPS:

11 Q. -- in the agreement that's signed in
12 2009, correct?

13 MS. SIMSON: Objection to form.

14 Asked and answered. Mischaracterizes her
15 testimony.

16 A. My statement that there is no such
17 contingency refers back to Novartis
18 improvements. There is no contingency stated
19 in this paragraph that refers back to Novartis
20 improvements.

21 Q. You --

22 A. Such.

23 Q. You agreed that it was conditioned
24 on undertaking an additional step, correct?

25 MS. SIMSON: Objection to form.

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2 Ignores Amendment No. 3 to the agreement,
3 and also object to the extent you're asking
4 for a legal conclusion or legal opinion.

5 A. Not giving you a legal conclusion
6 and recognizing the amendment, there is a
7 contingency, but it is not parallel to the
8 structure of little ii.

9 Q. Because it's not tied to Novartis
10 improvements, correct?

11 A. Or Novartis patents.

12 Q. You're familiar with Section 8.3(c)
13 of the 2009 agreement, correct?

14 A. Reasonably familiar.

15 Q. I take it that was sarcasm.

16 A. No. I have a full-time job. I
17 worked hard on this, but I am not a lawyer, and
18 I don't spend a hundred percent of every day
19 working on this particular agreement. I
20 worked -- during this period, I signed a major
21 agreement; during this period I've been working
22 on, eh, six, seven different agreements
23 simultaneously. I can get confused, I can
24 forget things because this is not my full-time
25 job.

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2 Q. Section 8.3(c) concerns both royalty
3 term and certain conditions under which
4 royalties reduce to 50 percent?

5 MS. SIMSON: Objection to form.

6 A. The provisions do discuss both
7 duration and a step-down.

8 Q. In Section 8.3(c), the royalty term
9 portion is the first half of the section ending
10 in the term -- in the underlying words "royalty
11 term," correct?

12 MS. SIMSON: Dr. Pullan, if you need
13 take a look to at what he's talking about
14 since it's a large paragraph, take your
15 time.

16 A. That is correct.

17 Q. And the second half of
18 Section 8.3(c) concerns the conditions where
19 royalties reduce to 50 percent, correct?

20 A. Of the applicable rate.

21 Q. And really this is just so I don't
22 have to -- I don't have to ask all the
23 questions twice about both the royalty term and
24 the 50 percent portion of it, but you agree
25 that the analysis of the disputed royalty term

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2 portion is the same as the analysis of the
3 dispute with respect to the step-down portion,
4 correct?

5 MS. SIMSON: Objection to form.

6 Objection to the extent you're asking for a
7 legal conclusion or a legal opinion.

8 A. I'm not sure what the analysis
9 means, so.

10 Q. You didn't do a separate analysis in
11 your expert reports of the royalty term versus
12 the conditions under which the term -- the
13 applicable royalty rates would reduce to
14 50 percent, right?

15 MS. SIMSON: Objection to form.

16 Objection to the extent he's attempting to
17 mischaracterize either of her expert
18 reports, and objection to the extent you're
19 asking for a legal conclusion or a legal
20 opinion.

21 A. Are they in different reports, no.
22 Did I think about each of them, yes.

23 Q. Let's try a different way. You
24 understand that the dispute between the parties
25 relates to Section 8.3(c)(i) of the royalty

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2 term, which reads: "The last to expire of any
3 valid claim of license patent rights covering
4 such licensed product in such country,"
5 correct?

6 MS. SIMSON: Objection to form.

7 Mischaracterizes Novartis's complaint in
8 this action, and objection to the extent
9 you're asking Dr. Pullan for a legal
10 opinion or a legal conclusion.

11 A. I believe that would be better said
12 that there is dispute about the moneys owed
13 both in duration and in timing of step-down.

14 Q. Okay. In the second portion of
15 8.3(c) dealing with the 50 percent reduction,
16 do you see the language that reads: "In a
17 specific country, the licensed product is
18 neither covered by a valid claim of licensed
19 patent rights"?

20 A. Where are we?

21 MS. SIMSON: Objection.

22 A. I'm sorry.

23 Q. In the second half of 8.3(c) that
24 deals with the 50 percent reduction, there is
25 a --

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2 A. Okay.

3 Q. -- portion that reads: "In a
4 specific country, the licensed product is
5 neither covered by a valid claim of license
6 patent rights."

7 MS. SIMSON: Objection. That
8 characterization omits a second half in the
9 bracket which then reads: "Nor such
10 licensed product is subject" --

11 MR. STOPS: That's fine, Counsel.
12 You can ask whatever you want on redirect.

13 MS. SIMSON: No. I'm just -- my
14 objection is that you left out the second
15 half of the --

16 MR. STOPS: You can say --

17 MS. SIMSON: -- sentence.

18 MR. STOPS: You can say objection to
19 form or something along those lines.

20 BY MR. STOPS:

21 Q. But go ahead, Dr. Pullan, can you
22 answer?

23 A. I see the language that says: "It's
24 neither covered by a valid claim nor regulatory
25 exclusivity."

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2 Q. Do you -- for the purposes of -- for
3 the purposes of your report, is your analysis
4 of Section 8.3(c)(i), which states: "The last
5 to expire of any valid claim of licensed patent
6 rights covering such licensed product in such
7 country," the same as your analysis of the
8 phrase in the second portion of 8.3(c), which
9 states: "In a specific country, the licensed
10 product is neither covered by a valid claim of
11 licensed patent rights."

12 MS. SIMSON: Same objection, and
13 object to the extent you're asking for a
14 legal conclusion and legal opinion.

15 A. To the extent that you're ignoring
16 the second half of that phrase, it's different.
17 To the extent that many of the words are the
18 same, the words are -- indeed many of them the
19 same.

20 Q. Is it your opinion that the words:
21 "A valid claim of licensed patent rights" in
22 the step-down portion of 8.3(c), has a
23 different meaning than the words: "Any valid
24 claim of licensed patent rights," in
25 Section 8.3(c)(i)?

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2 MS. SIMSON: Objection to form.

3 Objection to the extent -- withdrawn.

4 Objection to form. Objection to the extent
5 you're asking for a legal conclusion or
6 legal opinion.

7 A. I am not asserting the words are
8 different in those two phrases.

9 Q. So your analysis of those two
10 phrases is the same, correct?

11 MS. SIMSON: Objection to form.

12 Objection to the extent you're asking for a
13 legal --

14 A. My analysis is what I've written.
15 You can characterize it how you wish, but
16 I'm -- I think it's, again, slicing and dicing,
17 and I stand by what I've written.

18 Q. With respect to Incyte's royalty
19 payments to Novartis under Section 8.3(b)(i),
20 the licensed product is Jakafi, correct?

21 MS. SIMSON: Objection to the extent
22 you're asking for a legal opinion or a
23 legal conclusion.

24 A. The product upon which net sales are
25 paid is Jakafi.

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2 Q. Maybe if I said it -- said it
3 differently. With respect to Incyte's royalty
4 payments to Novartis under Section 8.3(b)(i),
5 the licensed product at issue is Jakafi,
6 correct?

7 MS. SIMSON: Objection to the extent
8 you're asking for a legal conclusion or
9 legal opinion.

10 A. I would interpret it as Jakafi.

11 Q. Because there could theoretically in
12 the future be other licensed products under
13 that section, correct?

14 MS. SIMSON: Objection to form.

15 A. Indeed there could.

16 Q. Such as an extended or other
17 modified release version of ruxolitinib for
18 example, correct?

19 MS. SIMSON: Objection to form.

20 Objection to the extent asking for a legal
21 conclusion or a legal opinion.

22 A. Or a Novartis JAK product.

23 Q. If it was a Novartis JAK product,
24 who would be paying royalties under
25 Section 8.3(b)(i)?

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2 A. If Incyte had the right to sell the
3 Novartis JAK product, Incyte would be paying
4 royalties to Novartis.

5 Q. My question was: If it was a
6 Novartis JAK product, who would be paying
7 royalties under Section 8.3(b)(i)?

8 MS. SIMSON: Objection to form.

9 A. I have forgotten all the provisions
10 of the terms that bring in the Novartis JAK
11 product into this arrangement.

12 Q. If one of the other Incyte molecules
13 specified in the schedules to the agreement was
14 marketed, that could also be under
15 Section 8.3(b)(i), correct?

16 A. I believe that is correct.

17 MS. SIMSON: Objection to form.

18 BY MR. STOPS:

19 Q. And with respect to Incyte's royalty
20 payments to Novartis under Section 8.3(b)(i),
21 the country is the United States and its
22 territories, correct?

23 A. Incyte territory is the United
24 States and its territories.

25 Q. You understand that there is no

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2 current dispute regarding Section 8.3(c)(iii),
3 the expiration of regulatory exclusivity for
4 such product in such country, correct?

5 MS. SIMSON: Objection to form.

6 Objection to the extent you're
7 mischaracterizing Novartis's complaint in
8 this action.

9 A. I understand that is not the subject
10 to which I am supposed to be addressing myself.

11 Q. We don't have to talk about that
12 today, right?

13 A. That's good.

14 MS. SIMSON: Objection to form.

15 BY MR. STOPS:

16 Q. Section 8.3(c)(ii) reads: "Ten
17 years following the date of first commercial
18 sale in such country," correct?

19 A. Correct.

20 Q. Section 8.3(c)(ii) sets a minimum
21 amount of time that the royalties will be paid
22 for all of the potential royalty streams in the
23 2009 agreement, correct?

24 MS. SIMSON: Objection to form.

25 THE WITNESS: And not to legal

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2 opinion?

3 MR. STOPS: You're not allowed to
4 object.

5 MS. SIMSON: I will say I will
6 object to the extent you're asking for a
7 legal conclusion or a legal opinion.

8 A. Not offering a legal opinion, but
9 offering a business development perspective,
10 the clause, just as the first clause of last --
11 expired valid claim, the clause of ten years or
12 some variations of that are very standard
13 language.

14 Q. And the -- the clause here: "Ten
15 years following the date of first commercial
16 sale in such country" is the minimum amount of
17 time that the royalties will be paid for each
18 of the royalty streams set forth in the 2009
19 agreement, correct?

20 MS. SIMSON: Objection to form.

21 A. There is a single definition
22 applying to each of the royalty streams in this
23 agreement.

24 Q. And each stream will last a minimum
25 of ten years, correct?

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2 MS. SIMSON: Objection to form.

3 Asked and answered.

4 A. Each stream will last a minimum of
5 ten years for first commercial sale on a
6 country-by-country, product-by-product basis.

7 Q. So for the over a hundred countries
8 or so that Novartis sells ruxolitinib in, it
9 will pay a royalty to Incyte for a minimum of
10 ten years, correct?

11 MS. SIMSON: Objection to form.

12 Objection to the extent you're asking for a
13 legal conclusion or a legal opinion.

14 A. And I don't know how many countries
15 Novartis sells in.

16 Q. Assuming it's over a hundred, for
17 all -- I'll take that statement out. For all
18 the countries that Novartis sells ruxolitinib
19 in, it will pay a royalty for a minimum of ten
20 years to Incyte based on net sales of the
21 product in that country, right?

22 MS. SIMSON: Objection to form.

23 Objection to the extent asking for a legal
24 conclusion or legal opinion.

25 A. And the same applies in all the

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2 directions, all the royalties. They are paid
3 for ten years from first commercial sale.

4 Q. And Novartis will pay Incyte
5 royalties on net sales of a ruxolitinib product
6 even in countries with no regulatory
7 exclusivity and no patent protection, correct?

8 MS. SIMSON: Objection to form.

9 Objection to the extent you're asking for a
10 legal conclusion or legal opinion.

11 A. It says the latter of any of these
12 circumstances. It says "the longer of."
13 Sorry. Same concept.

14 Q. So even if there is no patent
15 protection and no regulatory exclusivity,
16 royalties still exist for ten years?

17 MS. SIMSON: Objection to form.

18 Asked and answered.

19 A. Yes.

20 Q. And on a country-by-country,
21 product-by-product basis, royalties can be
22 extended if -- let me try a different way.

23 MS. SIMSON: Are you withdrawing
24 that?

25 MR. STOPS: Yeah, I'll withdraw that

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2 question.

3 BY MR. STOPS:

4 Q. Novartis's royalties to Incyte on a
5 product-by-product, country-by-country basis
6 can be extended if Incyte obtains patent
7 protection on Jakavi in the relevant country,
8 correct?

9 MS. SIMSON: Objection to form.

10 Object to the extent you're asking for a
11 legal conclusion or legal opinion.

12 A. The extent [sic] can be extended if
13 there are patents covering such product in the
14 particular country.

15 Q. I think I either misheard or -- I'll
16 just read it back and you tell me if it's
17 transcribed wrong. It came out as: The extent
18 can be extended if there are patents covering
19 such product in the particular country?

20 A. I don't think that's what I said,
21 but...

22 Q. Did you mean to say the royalty can
23 be extended?

24 A. The duration can be extended if
25 there are patents in that country.

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2 THE WITNESS: I can't imagine how
3 hard this job is.

4 Q. In your opinion, at the time the
5 agreement was executed in 2009, did Incyte and
6 Novartis know that Incyte's royalties to
7 Novartis would continue beyond ten years?

8 MS. SIMSON: Objection to form.

9 A. Ten years from what?

10 Q. Well, ten years from the first
11 commercial sale. Wouldn't necessarily start on
12 that date, as we discussed, but ten years from
13 that as a measuring point?

14 A. So there was uncertainty as to
15 whether it would get approved.

16 Q. Okay.

17 A. There was uncertainty as to when it
18 would get approved. There was uncertainty as
19 to when the last patent to claim to expire
20 would be.

21 The parties -- both parties
22 modelled, talked about, estimated loss of
23 exclusivity for more than ten years of sales.

24 Q. So is it your opinion that as of the
25 execution of the 2009 agreement, Incyte and

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2 Novartis knew that royalties would continue,
3 assuming there is approval and assuming that
4 Incyte's patents were not invalidated, but it's
5 your opinion that as of the execution of the
6 agreement in 2009, the parties knew that the
7 royalty from Incyte to Novartis would continue
8 beyond ten years to the expiration of the
9 Incyte's patents?

10 MS. SIMSON: Objection to form.

11 A. I think "knew" is too strong a word.
12 Believed, expected, yes.

13 Q. So if the parties expected the
14 royalty to continue until the expiration of
15 Incyte's patents, which would be beyond ten
16 years, there wasn't any reason to include the
17 ten-year provision in Section 8.3(c)(ii),
18 right?

19 A. They did not know. The provision
20 such as ten years is extremely common because
21 they cannot assume that patents are not
22 challenged and invalidated. They cannot assume
23 claims are granted. Country by country, they
24 cannot even assume there is a patent, right, so
25 no, that's not at all true.

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2 The provisions of multiple
3 parameters in patent -- in royalty durations
4 are extremely common. The forms of these are
5 practically universal. Not universal; there
6 are always exceptions. But this form of
7 last-to-expire claim, ten years from first
8 commercial sale, and regulatory exclusivity are
9 in the vast majority of deals, precisely
10 because it matters on a country-to-country
11 basis.

12 MS. SIMSON: Eric, I think we've
13 been going well over an hour. If we can
14 take a short break.

15 THE WITNESS: That would be great.
16 Thank you.

17 MR. STOPS: Okay.

18 THE VIDEOGRAPHER: We are going off
19 the record. The time is 3:17 p.m.

20 (Recess.)

21 THE VIDEOGRAPHER: We are back on
22 the record. The time is 3:44 p.m.

23 BY MR. STOPS:

24 Q. Dr. Pullan, do you still have the
25 2009 agreement in front of you.

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2 A. Yes.

3 Q. And that's Exhibit 1001, for the
4 record?

5 A. Yes.

6 Q. So we're still in section 8.3(c).
7 In Section 8.3(c)(i), it uses the phrase
8 "licensed patent rights," right?

9 A. Yes.

10 Q. Why does the section use the defined
11 phrase "licensed patent rights" instead of just
12 identifying the specific patent rights owned by
13 the parties in Section 8.3(c)?

14 MS. SIMSON: Objection to form.

15 Objection to the extent you're asking for a
16 legal opinion or legal conclusion.

17 A. I do believe lawyers write things
18 differently, but in this particular case, I
19 believe the point here is that the same
20 provisions cover the Incyte patents, Novartis
21 patents, joint patents, patents that aren't yet
22 filed, and therefore, a single lump worked to
23 serve the purpose.

24 Q. The -- instead of licensed patent
25 rights, Section 8.3(c)(i) could have just said

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2 Incyte patent rights, Novartis patent rights,
3 and patent rights in joint IP, right?

4 MS. SIMSON: Objection to form.

5 Also objection to the extent you're asking
6 for a legal conclusion or legal opinion.

7 A. And patent rights in joint IP, is
8 that the same as joint patent rights?

9 Q. So I don't think joint patent rights
10 is a defined term. So instead of -- instead of
11 it saying joint patent rights, in other
12 sections I believe it says patent rights and
13 joint IP. So I was trying not to make up a
14 term there.

15 A. I see.

16 Q. So my question is just -- so instead
17 of licensed patent rights in Section 8.3(c)(i),
18 in your opinion, it would have been the same to
19 write Incyte patent rights, Novartis patent
20 rights, and patent rights in joint IP, correct?

21 MS. SIMSON: Objection to form.

22 Object to the extent it mischaracterizes
23 her opinions in her report.

24 A. I do believe the parties intended
25 the duration of the royalties to be the

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2 last-to-expire claim of any patent, including
3 an Incyte patent, a Novartis patent, or however
4 you phrase a joint patent.

5 Q. We can call it joint patents. I
6 think we know -- understand what you mean
7 there. Okay.

8 So instead of licensed patent
9 rights, it could have said Incyte patent
10 rights, Novartis patent rights, and joint
11 patent rights, right?

12 MS. SIMSON: Objection to form.

13 Object to the extent you're asking for a
14 legal conclusion or legal opinion.

15 A. And I suppose one could argue, if
16 you really want to be argumentative, that it
17 could have said almost anything. This is what
18 they did agree to.

19 Q. I prefaced that poorly then.
20 Without changing the meaning of the
21 Section 8.3(c)(i), instead of licensed patent
22 rights, it could have said Incyte patent
23 rights, Novartis patent rights, or joint patent
24 rights?

25 A. Again --

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2 MS. SIMSON: Same objections.

3 A. -- not as a lawyer. I would argue
4 that that would be equivalent, but there may be
5 lawyerly purposes for the specific choices of
6 words, but the concept is that the parties work
7 together, pool their patents, and the patent
8 duration is based on loss of patent
9 exclusivity, ten years, or regulatory
10 exclusivity.

11 Q. So I think your answer is you don't
12 have an opinion on this, but just checking.

13 Do you have an opinion on why the
14 drafters of the 2009 agreement use the term
15 licensed patent rights instead of simply
16 specifying Incyte patent rights, Novartis
17 patent rights, and joint patent rights?

18 MS. SIMSON: Objection to form.

19 Calls for speculation. Also object to
20 extent you're asking for a legal conclusion
21 or legal opinion.

22 A. I think this was a nice clean
23 description, but I, again, am not offering a
24 legal opinion.

25 Q. You're not offering a nonlegal

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2 opinion on why they didn't draft it -- in
3 alternative ways, correct?

4 MS. SIMSON: Objection to form.

5 A. Hypotheticals are tough to answer
6 and what they could have, would have, should
7 have. This is what they did.

8 Q. So licensed patent rights itself is
9 defined in the agreement at Section 1.67, which
10 is on Page 10.

11 A. Yes.

12 Q. Okay. Do you know how many times in
13 the agreement that the defined term licensed
14 patent rights is used?

15 MS. SIMSON: Objection to form.

16 A. I have read that it is asserting,
17 but I have not actually counted, once.

18 Q. You've read that it is used once,
19 but you haven't actually counted; is that what
20 you --

21 A. Correct.

22 Q. Okay.

23 A. Royalty term is also only used once.

24 Q. True.

25 A. The defined, the description of it,

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2 the term may be used more than once, but it is
3 in one place for all three streams.

4 Q. Ah, I understand what you're saying.

5 The words -- the phrase, rather,
6 "with respect to," is commonly used in
7 licensing collaboration agreements, correct?

8 MS. SIMSON: Objection to form.

9 Foundation.

10 A. I would agree that I have seen "with
11 respect to" in licensing agreements.

12 Q. Do you know how many times the
13 phrase "with respect to" appears in the 2009
14 agreement, Exhibit 1001?

15 MS. SIMSON: Objection to form.

16 BY MR. STOPS:

17 Q. Do you have -- are you offering an
18 opinion about what the words "with respect to"
19 mean in your report?

20 MS. SIMSON: Objection to form and
21 objection to the extent you're asking for a
22 legal conclusion, legal opinion.

23 Anita, the screen has just frozen
24 for a minute. If you mind giving me --

25 You can go ahead and answer the

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2 question.

3 A. I have seen the language "with
4 respect to" used in agreements, and I have read
5 the agreements as -- as a business
6 professional, and I do not find any merit in an
7 argument that it somehow divides the patent
8 rights by who's selling or where the patents
9 came from. I do not see a distinction of any
10 meaningful import by the addition "with respect
11 to" other than sort of saying in the ordinary
12 course of language what it says.

13 Q. I hadn't gotten there yet. I was
14 just asking in general, in drafting,
15 interpreting agreements, do the words, "with
16 respect to," have meaning?

17 MS. SIMSON: Objection to form. And
18 objection to the extent calling for a legal
19 conclusion or legal opinion.

20 A. They have meaning as pointers, but
21 they don't have any ability to -- to slice and
22 dice and change the concept of the parties
23 agree to work together, each give each other
24 whatever patents are necessary or useful, and
25 pay each other royalties, and those royalties

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2 last as long as there is a valid claim, or ten
3 years, or regulatory exclusivity, the latter
4 longer of. Go ahead.

5 Q. So jumping ahead, I'm still --
6 leaving aside this -- if we had never looked at
7 the 2009 agreement between Incyte and Novartis,
8 in drafting other agreements, have you ever
9 used the phrase "with respect to"?

10 A. I'm sure I have.

11 Q. And when you've done that, what has
12 it meant?

13 MS. SIMSON: Objection to form.

14 A. "With respect to," referring to, as
15 noted here.

16 Q. So now to the actual definition of
17 licensed patent rights, when it says in the
18 first clause, "licensed patent rights means
19 with respect to the patent rights licensed to
20 Novartis hereunder, the Incyte patent rights,"
21 in that phrase, what do you understand "with
22 respect to," to mean?

23 A. Talking about the patent rights
24 licensed to Novartis, they are the Incyte
25 patent rights.

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2 Q. So when we're talking about the
3 patent rights licensed to Novartis hereunder,
4 we mean the Incyte patent rights?

5 A. Yes.

6 Q. So under what circumstances are we
7 talking about the patent rights licensed to
8 Novartis?

9 MS. SIMSON: Objection to form.

10 Vague.

11 A. Under the circumstances of this
12 agreement.

13 Q. So when we're talking about a
14 product that Novartis sells, when we're
15 interested in examining a product that Novartis
16 sells, we're talking about the patent rights
17 that are licensed to Novartis, right?

18 MS. SIMSON: Objection to form.

19 A. That's not what this says. This
20 says when we're talking about patent rights
21 licensed to Novartis, we're talking about the
22 Incyte patent rights. It doesn't say, with
23 respect to who's selling the drug, the patent
24 rights. It doesn't say that.

25 Q. So when we're talking about what

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2 licensed patent rights are licensed to
3 Novartis, we're talking about the Incyte patent
4 rights?

5 MS. SIMSON: Objection to form.

6 A. When we're talking about what
7 patents are licensed to Novartis, we are
8 talking about the Incyte patent rights. Incyte
9 patent rights.

10 Q. So with respect to Novartis,
11 licensed patent rights means the Incyte patent
12 rights?

13 A. With respect to the patent rights
14 licensed to Novartis, those are the Incyte
15 patent rights.

16 Q. And the term is licensed patent
17 rights. So the patents -- licensed patent
18 rights, the patents that are licensed to
19 Novartis, I'm still trying to figure out what
20 licensed patent rights means with respect to
21 what's licensed to Novartis, that it means the
22 Incyte patent rights --

23 MS. SIMSON: Objection to form.

24 BY MR. STOPS:

25 Q. -- right?

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2 A. No.

3 MS. SIMSON: And objection to the
4 extent it's asking for a legal opinion or
5 legal conclusion.

6 Go ahead, Dr. Pullan.

7 A. As noted in my report, as noted
8 based on many years of experience, the parties
9 pool the patents to protect the product. The
10 royalty duration is defined by the existence of
11 a patent under this whole clause, the entire
12 whole clause, such that, no matter whose patent
13 it is, it is for the duration of the last valid
14 claim under this entire paragraph 1.67.

15 Q. You were saying before -- it
16 confused me because it didn't seem consistent
17 with the way that you phrased things in other
18 places. The word "licensed patent rights," if
19 it was not capitalized, you say -- sorry.
20 Let's start a different way.

21 Licensed patent rights in your
22 opinion, in the context of the 2009 agreement,
23 means the same as or has the same intent as
24 licensed IP in the July 9 term sheet, right?

25 MS. SIMSON: Objection to form.

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2 Mischaracterizes testimony. Object to the
3 extent calls for a legal conclusion or a
4 legal opinion, and object to your
5 characterization of her being inconsistent.

6 You can go ahead, Dr. Pullan.

7 A. Thank you.

8 It's entirely possible I'm not as
9 clear as I would like to be and don't remember
10 every detail of what I have said, but I believe
11 I am entirely consistent in arguing that, read
12 in a straightforward way, the duration of the
13 royalties is any valid claim in the licensed
14 patent rights, and the licensed patent rights
15 includes Incyte patent rights and Novartis
16 patent rights.

17 Q. So --

18 A. And I skipped joint IP. Sorry.

19 Q. In your opinion, licensed patent
20 rights is not conditional; is that right?

21 MS. SIMSON: Objection to form. And
22 object to the extent you're asking for a
23 legal opinion or legal conclusion.

24 A. So they could be conditional on
25 something. The patents are invalid; there are

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2 no patents, right.

3 Q. Not, not that way.

4 So licensed patent rights in the
5 context of the 2009 agreement always means the
6 same thing, no matter what royalty stream
7 you're looking at, right? That's your opinion?

8 A. Yes.

9 MS. SIMSON: Objection to form.

10 A. There is a single clause governing
11 all three royalty streams.

12 Q. Just like Novartis territory?

13 MS. SIMSON: Objection to form.

14 Vague.

15 A. Novartis territory doesn't -- I see
16 what you're trying to do, but Novartis
17 territory is clearly distinct because there is
18 a worldwide rights under cMET.

19 Q. Because you read Novartis territory
20 as conditional?

21 MS. SIMSON: Objection to form.

22 A. I find that --

23 MS. SIMSON: Mischaracterizes prior
24 testimony.

25 A. I find that conditional thing a

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2 useless word because all things are
3 conditional. You know, if we're not alive, we
4 wouldn't be having this conversation. That's a
5 condition. That's a conditional. So -- I
6 don't get it.

7 Q. It's like a logical game. If you --
8 if it depends on the starting condition, you
9 get a different output. So if you start -- for
10 license for Novartis territory, if you're
11 looking at cMET, you then use the one term
12 Novartis territory and you get one answer. If
13 you're looking at JAK and you use Novartis
14 territory, you get a different answer, right?

15 A. Right.

16 MS. SIMSON: Objection.

17 Q. Now, licensed patent rights, you
18 think it doesn't matter what the starting
19 condition is if it's 8.3(a)(i) royalties,
20 8.3(a)(ii), 8.3(b)(i), 8.3(b)(ii), you get the
21 licensed patent right, and you get the same
22 answer no matter what. It's always Incyte
23 patent rights, Novartis patent rights, and
24 joint patent rights, right?

25 MS. SIMSON: Objection to form. And

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2 object to the extent called for a legal
3 opinion or a legal conclusion.

4 A. I believe you have a logic error in
5 that the starting point of royalty term is
6 8.3(c). It is not all those other pieces. So
7 the starting point is the royalty term includes
8 licensed patent rights.

9 Q. Licensed patent rights is -- sorry.
10 The royalty term is broken up on a
11 product-by-product, country-by-country basis.

12 A. But there is one starting point,
13 8.3(c).

14 Q. It's actually -- it's actually many
15 more than just the four royalty streams because
16 there's many different products and many
17 different countries.

18 A. Which is all covered in 8.3(c).

19 Q. Right.

20 A. On a licensed product by licensed
21 product -- I'm sorry. On a licensed product by
22 licensed product and country-by-country basis.
23 It's all right here.

24 Q. So these are all different starting
25 points. There are lots of licensed products,

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2 right?

3 MS. SIMSON: Objection to form.

4 Argumentative. Now you're badgering the

5 witness, Counsel.

6 BY MR. STOPS:

7 Q. Do you agree there are multiple
8 licensed products?

9 A. Yes.

10 Q. There are multiple countries?

11 A. Yes.

12 Q. So each combination of licensed
13 product and country has a different royalty
14 stream?

15 MS. SIMSON: Objection to form. And
16 also incomplete hypothetical.

17 A. And everything is dealt with right
18 here. You don't need to go elsewhere to say
19 that there are multiple products and multiple
20 countries. This is the starting point to think
21 about the royalty term, and it uses licensed
22 patent rights covering such licensed product in
23 such country. It doesn't say because it came
24 from somebody else. It doesn't say because
25 it's being sold by somebody else. It says on a

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2 licensed product by licensed product basis --
3 sorry, I added the word basis -- and
4 country-by-country basis, the last to expire of
5 any valid claim of licensed patent rights
6 covering such licensed products.

7 You don't need to go reach somewhere
8 else. It's right there.

9 Q. Don't you have to know whether it
10 covers the licensed product?

11 MS. SIMSON: Objection to form. And
12 objection to the extent it asks for a legal
13 conclusion.

14 BY MR. STOPS:

15 Q. Let me try a different way. Let me
16 try a different way then.

17 MS. SIMSON: Are you withdrawing
18 that question then?

19 MR. STOPS: I'm asking a question.

20 BY MR. STOPS:

21 Q. So there are JAK -- there are patent
22 rights that relate to ruxolitinib, correct?

23 A. Yes.

24 Q. There are patent rights that relate
25 to capmatinib, the cMET licensed product.

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2 A. Tabrecta, whatever it is.

3 Q. That's the brand name. Tabrecta.

4 The brand is T-A-B-R-E-C-T-A and the word I

5 said was capmatinib. C-A-P --

6 MS. SIMSON: M-A-T.

7 MR. STOPS: -- I-N-I-B. Capmatinib.

8 MS. SIMSON: No objection to that

9 spelling.

10 MR. STOPS: Didn't want to do that

11 again.

12 A. The only part I can ever remember is

13 the last part because that stands for an

14 inhibitor.

15 Q. Okay. Sorry. There are patent

16 rights that are in the JAK area and patent

17 rights that are in the cMET area, right?

18 MS. SIMSON: Objection to form.

19 A. Area? There are patent rights that

20 cover JAK molecules, products; and patent

21 rights that cover MET, cMET compounds or

22 patents -- compounds or products. I'm sorry.

23 Q. Does licensed patent rights mean

24 something different depending on if we're

25 looking at a JAK-licensed product or a

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2 cMET-licensed product?

3 MS. SIMSON: Objection to form, and
4 to the extent you're asking for a legal
5 conclusion or legal opinion.

6 A. Licensed? Ask me the question
7 again, please.

8 Q. Does licensed patent rights mean
9 different things if we're looking at
10 JAK-licensed products or cMET-licensed
11 products?

12 MS. SIMSON: Objection to form, and
13 to the extent you're asking for a legal
14 conclusion or legal opinion.

15 A. In a definition basis, it means the
16 same thing, the lump of patents.

17 In a practical term, it is the
18 patents covering the product. So there will be
19 different patents that cover different
20 products. But the -- you do not need to break
21 it apart to have this paragraph make sense and
22 be interpretable.

23 Q. Right. My point is much, much
24 simpler. Your -- depending on the starting
25 condition, JAK-licensed product or

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2 cMET-licensed product, then we get to the
3 defined term, licensed patent rights, you get
4 something different out, even under your
5 interpretation, right?

6 MS. SIMSON: Objection to form. To
7 the extent you're asking for a legal
8 opinion or legal conclusion, I'll object on
9 that basis as well.

10 A. And "get something different," you
11 pay royalties on a product that is covered by a
12 patent. That patent could come from either
13 party. Clearly, a patent that covers a cMET
14 inhibitor that doesn't cover a JAK inhibitor --
15 there could be one that covers both -- but
16 clearly one that does not cover a JAK inhibitor
17 would not trigger a royalty. But that doesn't
18 change what the language says.

19 Q. So licensed patent rights means
20 the -- means patent rights relating to JAK
21 products even with respect to the
22 commercialization of cMET products?

23 A. No.

24 MS. SIMSON: Objection to form.

25 Mischaracterizes her testimony.

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2 A. I just said, clearly it's patents
3 that cover the product. So it would not
4 capture patents that don't cover the product.
5 But any patents that cover the product would be
6 captured.

7 Q. Okay. So let's go up to 1.67
8 license patent rights on Page 10 of the
9 agreement. The first words of the second
10 sentence are: "In each case."

11 Do you see that?

12 A. Yes.

13 Q. The words "in each case," have
14 meaning, right?

15 MS. SIMSON: Objection to form, and
16 to the extent you're asking for a legal
17 conclusion or opinion.

18 A. I'm not denying the words have
19 meaning, but I also think you don't need to
20 divide this definition, the definition applies
21 as it is written in 8.3(c).

22 Q. Well, then, what are the cases?

23 MS. SIMSON: Objection to form.

24 Vague. And to the extent asking for a
25 legal conclusion or opinion.

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2 A. I think "in each case" refers to the
3 joint IP included in the Incyte patent rights
4 and the Novartis patent rights. The sentence.

5 Q. So in the case of patent rights
6 licensed to Novartis, you read it to mean
7 Incyte patent rights and patent rights forming
8 part of the joint IP, correct?

9 MS. SIMSON: Objection to form, and
10 to the extent asking for a legal conclusion
11 or opinion.

12 A. And I don't -- I think you're
13 compounding the two things. You said in a case
14 of patents licensed to Novartis. I'm reading
15 joint IP.

16 Q. Right.

17 A. No. I read this sentence and it
18 says, "Patent rights forming joint IP shall be
19 included in Incyte patent rights and Novartis
20 patent rights."

21 I don't see a division that you're
22 trying to reach for.

23 Q. Well, I thought I was actually
24 rephrasing what you said.

25 So it says "each case," right?

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2 A. Right.

3 Q. So "each" means more than one?

4 MS. SIMSON: Objection to form.

5 BY MR. STOPS:

6 Q. So I read this as having two cases.

7 MS. SIMSON: Objection to form.

8 And --

9 BY MR. STOPS:

10 Q. I wasn't -- so I read this as having
11 two cases.

12 Is that consistent with how you read
13 the -- the words "in each case" in
14 Section 1.67?

15 MS. SIMSON: Objection to the form,
16 and to the extent asking for a legal
17 opinion or legal conclusion.

18 A. Incyte patent rights and Novartis
19 patent rights are part of joint IP and patent
20 rights.

21 Q. I'm sorry. So what are the cases,
22 in your reading of this?

23 MS. SIMSON: Objection to form.

24 Same objections with respect to asking for
25 a legal conclusion or legal opinion.

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2 A. The sentence refers to the -- the
3 parts, but the parts are all included in
4 licensed patent rights. And joint IPs shall be
5 included in the case of Incyte patent rights
6 and in the case of Novartis patent rights.

7 Q. So if it's all lumped together why
8 does it need two cases?

9 MS. SIMSON: Objection to form.
10 Mischaracterizes testimony.

11 A. And --

12 MS. SIMSON: And object to the
13 extent asking for a legal conclusion or
14 legal opinion.

15 A. I cannot judge why someone wrote it
16 exactly as how they wrote it, and that is not
17 my role. I can tell you that an experienced
18 person reading this would see no reason to come
19 to the conclusion that the licensed patent
20 rights as used in 8.3(c) does not mean the
21 patent rights that cover the product, whichever
22 party they come from in such country.

23 Q. So the defined term is Licensed
24 Patent Rights, all capital first letters,
25 right?

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2 A. Yes, sir.

3 Q. What significance, if any, do you
4 give to the choice of words: "Licensed,
5 patent, and rights" here rather than orange --

6 MS. SIMSON: Objection to form.

7 BY MR. STOPS:

8 Q. -- for example?

9 MS. SIMSON: And to the extent
10 asking for a legal opinion or legal
11 conclusion.

12 A. I asked for that by playing with you
13 earlier, but I'm not going to parse the
14 individual words.

15 Q. No, no, I'm actually not -- I'm not
16 asking you to. I'm just asking you if had this
17 said orange or something else, if it had other
18 words here instead of licensed patent rights as
19 a defined term, would that change the meaning,
20 in your opinion?

21 MS. SIMSON: Objection to form, and
22 to the extent asking for a legal opinion or
23 legal conclusion.

24 A. I do think that's a legal
25 conclusion. I think it would certainly make

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2 interpretation more difficult because we
3 certainly approach contracts using the standard
4 vocabulary that we develop over hundreds of
5 contracts, and this is very standard
6 vocabulary, and orange would not be standard
7 vocabulary and would not be helpful.

8 Q. Is a way to look at it that, since
9 the words licensed patent rights are, in your
10 opinion, words that are somewhat commonly used,
11 the reader comes to the definition with a
12 general understanding of what they're going to
13 mean?

14 MS. SIMSON: Objection to form to
15 the extent asking for a legal conclusion or
16 legal opinion. And also mischaracterizes
17 her testimony.

18 A. I think it is certainly true that by
19 using standard forms, that unless one finds an
20 explicit deviation from those standard forms, a
21 noted exception, that it is most likely
22 interpretable as consistent with standard
23 business practices. Jargon arises in an
24 industry of a profession because it is useful,
25 and we all have our jargon.

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2 Q. So if you see a term that is
3 consistent with industry practice, you would --
4 general understanding of what you're going to
5 get, but if you saw something like orange, it
6 wouldn't be helpful?

7 A. It would not be helpful.

8 MS. SIMSON: Objection to form.

9 A. But it's also true that if I saw the
10 standard words and the definition was very
11 nonstandard, that I also would take note.
12 Either the use of a nonstandard word as a
13 defined term or a very nonstandard definition
14 would cause an alert to pay attention to the
15 exception, or if there's something explicitly
16 stated, we would pay attention to that explicit
17 statement.

18 Q. Now, this definition "with respect
19 to the patent rights licensed to Novartis
20 hereunder, the Incyte patent rights, and with
21 respect to the patent rights licensed to Incyte
22 hereunder, the Novartis patent rights, in each
23 case the patent rights forming part of the
24 joint IP shall be included as applicable in the
25 Incyte patent rights and Novartis patent

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2 rights," leaving aside the party names, of
3 course, is this standard form?

4 MS. SIMSON: Objection to form, and
5 to the extent asking for a legal conclusion
6 or legal opinion.

7 A. It certainly reads as a form that I
8 have seen in other agreements. It is not
9 precisely the same form as in some other
10 agreements, but it doesn't jump out as
11 something oddball, nonstandard.

12 Q. So it doesn't say oranges?

13 A. It doesn't say orange.

14 Q. So -- okay, so let's go back. Would
15 you turn to Section 7.3 of the agreement. That
16 is, I believe, titled: Third-party
17 infringement.

18 MS. SIMSON: Do you have a page
19 number, Mr. Stops?

20 MR. STOPS: I will. It is Page 48
21 of the agreement.

22 MS. SIMSON: Thank you.

23 BY MR. STOPS:

24 Q. The first Subsection 7.3(a) is
25 notice provisions, correct?

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2 A. Yes.

3 Q. And in the first sentence, it
4 relates to notice of infringement of joint IP,
5 Incyte IP, or any Novartis IP.

6 Do you see that?

7 A. Yes.

8 Q. Had the parties wanted to pool
9 patent rights, they could have used similar
10 language to the language of Section 7.3(a),
11 correct?

12 MS. SIMSON: Objection to form, and
13 to the extent asking for a legal conclusion
14 or legal opinion.

15 A. And it's a hypothetical. And they
16 could have said, any joint IP, any Incyte IP,
17 or any Novartis IP. They didn't. The word
18 "any" doesn't appear in exact parallel form.
19 There are stylistic differences. People do not
20 write everything exactly the same way
21 throughout a contract, and different lawyers
22 contribute different pieces of contracts and
23 write differently.

24 Q. Sure. My question was just,
25 licensed patent rights -- I'm sorry, instead of

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2 licensed patent rights in Section 8.3(c)(i),
3 the parties could have just used this same form
4 and written it: Joint patents, Incyte patents,
5 or any Novartis patents, right?

6 MS. SIMSON: Objection to form to
7 the extent asking for legal conclusion or
8 legal opinion. Also incomplete
9 hypothetical.

10 A. It is a hypothetical. It is my
11 opinion that that would be a largely equivalent
12 form.

13 Q. So --

14 MS. SIMSON: Sorry. Did she say she
15 needed to fix something?

16 (Multiple speakers.)

17 BY MR. STOPS:

18 Q. At the time the 2009 agreement was
19 executed, there was no product named Jakafi,
20 correct?

21 A. Correct.

22 MS. SIMSON: Objection to form.

23 Q. And there was no product named
24 Jakavi, right?

25 A. Right. Because Novartis owned both

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2 those brand names and gave them to Incyte. One
3 of its many contributions to Incyte was both
4 brand names. And they're good brand names by
5 the way. The world knows those drug names.
6 Much better than many of the other ones, right?
7 Easy to remember.

8 Q. Incyte -- ruxolitinib was the first
9 approved Janus-kinase inhibitor, correct?

10 MS. SIMSON: Objection to form.

11 A. Yes, as far as I know. I could be
12 wrong on that, to be honest. I don't -- I
13 believe so.

14 Q. Janus kinase is what's abbreviated
15 JAK?

16 A. JAK. Right.

17 Q. There were no products being sold at
18 all under the agreement when it was executed in
19 2009, right?

20 A. That's correct. Incyte had no
21 commercial infrastructure. And nothing had
22 been approved.

23 Q. There were several possible JAK
24 compounds that could have been sold under the
25 2009 agreement, correct?

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2 MS. SIMSON: Objection to form. And
3 incomplete hypothetical.

4 A. There are potential alternative
5 compounds to rux that could have been under
6 this agreement as the first product sold.
7 There still could be additional products sold
8 under this agreement.

9 Q. So would a -- a JAK inhibitor other
10 than ruxolitinib could have been sold by either
11 party under the agreement, correct?

12 MS. SIMSON: Objection to form.

13 A. Yes.

14 Q. And several other Incyte JAK
15 inhibitors are identified in the agreement as
16 potential compounds, correct?

17 MS. SIMSON: Objection to form.

18 A. There are INCB numbers.

19 Q. I think we mentioned this -- I think
20 we went over this before, but under the
21 Section 8.3(b)(i) royalty from Incyte to
22 Novartis, the only currently relevant JAK
23 product is Jakafi, right?

24 MS. SIMSON: Objection to form.

25 A. I have no firsthand knowledge that

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2 that is true, but I believe that to be true.

3 Q. And the relevant Incyte territory is
4 the United States and its territories, right?

5 A. Yes.

6 Q. So in Section 8.3(c)(i) --

7 MS. SIMSON: Counsel, you're
8 flipping now back to Page 57. I just saw
9 you.

10 MR. STOPS: We were on it with
11 8.3(b)(i).

12 BY MR. STOPS:

13 Q. So in Section 8.3(c)(i), with
14 respect to Incyte's royalty to Novartis under
15 8.3(b)(i), where it reads: "Such licensed
16 product in such country, the relevant Incyte
17 royalties to Novartis will be based on sales of
18 the product Jakafi made in the United States,"
19 correct?

20 MS. SIMSON: Objection to form, and
21 to the extent calling for a legal
22 conclusion or legal opinion.

23 A. So such country, that's -- that I
24 got kind of lost. Are you saying such country
25 as in B or in C?

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2 Q. So I'm just trying to make sure
3 we're talking about the same thing. I'm
4 talking about the royalties being paid pursuant
5 to 8.3(b)(i) from Incyte to Novartis,
6 currently, or that were already subject of this
7 dispute between the parties.

8 And with respect to those royalties,
9 when we go look at 8.3(c)(i), where it says:
10 "Covering such licensed product in such
11 country, such licensed product is Jakafi and
12 such country is the United States," correct?

13 MS. SIMSON: Objection to form and
14 to the extent calling for a legal
15 conclusion or legal opinion.

16 A. I concur.

17 Q. So from your reports, I understand
18 that it's your position that the parties should
19 have been -- rather, I understand it's your
20 position that the parties should have more
21 clearly spelled out that Novartis's royalties
22 to Incyte based on sales -- let me start that
23 again. I think that was a little confusing.

24 So you -- you generally understand
25 Incyte's positions in this case, that the

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2 royalties have -- that the ten years have
3 passed and the royalties have stopped, right?

4 MS. SIMSON: Objection to form. And

5 Novartis obviously disputes that position.

6 A. I do not understand the basis for
7 those opinions. I understand that is what they
8 are claiming.

9 Q. Do you not understand the basis or
10 did you not agree with the basis?

11 MS. SIMSON: Same objection.

12 A. I think both are true. I cannot
13 understand how they can possibly get to such a
14 conclusion and therefore I disagree with their
15 conclusion.

16 Q. Okay. Had --

17 MS. SIMSON: Just for the record,
18 there is a glass of water spilled and we
19 are okay.

20 BY MR. STOPS:

21 Q. So had the parties wanted to
22 effectuate Incyte's interpretation of
23 Section 8.3(c)(i), okay, it's your opinion that
24 they should have more clearly spelled out that
25 Incyte's royalties to Novartis on sales of

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2 Jakafi in the United States do not depend on
3 any patents that Incyte obtains, correct?

4 MS. SIMSON: Objection to form.

5 Mischaracterizes her opinions and her
6 testimony.

7 A. I think it is true that I would
8 state that if the parties had agreed that
9 Novartis was required to get a patent, it would
10 have been discussed, it would have appeared in
11 the term sheets, it would have been on the
12 issues list, it would have been in the
13 agreement in an explicit manner. None of the
14 above is true.

15 Q. Now, you don't provide any proposed
16 language in your report to accomplish that
17 proposed clarification, right?

18 MS. SIMSON: Objection to form, and
19 to the extent calls for a legal conclusion
20 or a legal opinion.

21 A. The language that I would propose
22 would be the practical language of a business
23 development person and the final contract would
24 reflect a legal -- a lawyer's write-up.

25 Q. Okay.

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2 A. And therefore I do not propose the
3 specific language. I always tell my clients
4 that we get a lawyer when we get down to
5 precise language. We BD people focus on making
6 the arrangement work, the collaboration work.
7 We focus on who does what, who pays what, and
8 how long they get paid.

9 Those are the sort of fundamental
10 things, not all the fundamental things, but the
11 majority of fundamental things that are
12 pre-agreed in a term sheet. And then the
13 precise form of the language that captures
14 those in the fullest form is written by
15 lawyers.

16 Q. So the lawyers effectuate the intent
17 of the BD people; is that what you're saying?

18 MS. SIMSON: Objection to form.

19 Mischaracterizes testimony.

20 A. The lawyers are to reflect the
21 agreed-upon structure and relationship as
22 defined by the term sheets, with input from
23 lawyers, but the -- the drivers of the
24 structure are typically business development
25 professionals.

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2 Q. So wait, then what's the lawyer
3 role?

4 A. To capture and make complete the
5 language that reflects the structure, and to
6 add things like the assignment clauses and
7 things that we don't normally put in term
8 sheets.

9 Q. So you don't draft the language of
10 the agreements?

11 MS. SIMSON: Objection to form.

12 A. I do not draft the final language of
13 agreements, correct.

14 Q. And you didn't propose any draft
15 language in your reports in this matter that
16 would have effectuated Incyte's position in
17 this case, correct?

18 MS. SIMSON: Objection to form.

19 A. It was not my purpose --

20 Q. Sure.

21 A. -- to amend the agreement.

22 Q. No. But you didn't say anywhere in
23 your report, if Incyte wanted to say what it
24 says it says, it should have drafted it this
25 way, right?

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2 MS. SIMSON: Objection to form.

3 Mischaracterizes her opinions.

4 A. I said in my report if the parties
5 had agreed to a particular stipulation, it --
6 particularly when it goes beyond the norm, it
7 would be reflected in explicit language. I did
8 not write, myself, that explicit language. I
9 didn't think it was necessary. That is, it's
10 pretty obvious that it's not there.

11 Q. Well, Incyte's position is that it
12 is explicitly there, right?

13 MS. SIMSON: Object.

14 BY MR. STOPS:

15 Q. Look you don't have to agree with
16 it, but you understand that's Incyte's
17 position, correct?

18 MS. SIMSON: Objection to form.

19 Argumentative.

20 A. I think it is not explicitly there.

21 Q. Right. You understand that it's
22 Incyte's position that it is explicitly there?

23 MS. SIMSON: Objection to form.

24 Argumentative.

25 A. I understand Incyte disputes the

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2 obvious interpretation that certainly I and
3 others are likely to reach by reading this
4 thing.

5 Q. Well, not everybody reaches that
6 conclusion, right?

7 MS. SIMSON: Objection to form.

8 Argumentative.

9 A. I agree Incyte has a different
10 perspective. I do not see any explicit
11 language that supports the contention that
12 Novartis has to go get a patent. I do not see
13 it in the contract, I do not see it in the
14 discussions, I do not see it in the Incyte
15 presentations, I don't see it in the Novartis
16 presentations. It does not exist.

17 Q. What do you mean Novartis has to get
18 a patent? Who says Novartis has to get a
19 patent?

20 MS. SIMSON: Objection to form.

21 A. Or not get paid.

22 Q. But they do get paid.

23 MS. SIMSON: Objection to form.

24 Mischaracterizes the record.

25 BY MR. STOPS:

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2 Q. Hold on. Just so we have it clear,
3 Novartis does get paid, right?

4 MS. SIMSON: Objection to form --

5 A. Incyte --

6 MS. SIMSON: I just want to state
7 for the record, Incyte has taken the
8 position that they are no longer paying
9 Novartis. So I'm going to object to your
10 question on that basis.

11 A. Incyte has said they're not paying
12 Novartis.

13 Q. Right.

14 A. They stepped down and are not
15 paying.

16 Q. But Novartis got paid for ten years,
17 right?

18 MS. SIMSON: Objection to form.

19 Mischaracterizes the record.

20 A. And that is not the last to expire
21 of any valid claim.

22 Q. No. So just so we're clear, no one
23 has ever said that Novartis had to get a
24 patent.

25 They got the benefit of what they

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2 bargained for, right?

3 MS. SIMSON: Objection to form.

4 Mischaracterizes the record and

5 Dr. Pullan's opinions and testimony.

6 (Multiple speakers.)

7 A. This is what they bargained for --

8 MS. SIMSON: And Dr. Pullan's

9 opinions and testimony.

10 BY MR. STOPS:

11 Q. When you said -- when you say this
12 is what you bargained for, you pointed to
13 Section 8.3(c) of the agreement?

14 A. And it includes the last to expire
15 of any valid claim of a patent covering the
16 product in the country.

17 Q. That's not what it says, though,
18 right?

19 MS. SIMSON: Objection to form.

20 Argumentative.

21 BY MR. STOPS:

22 Q. The actual words are: "The last to
23 expire of any valid claim of capitalized, Term,
24 Licensed, capitalized P Patent, capitalized R
25 Rights, capitalized C Covering such licensed

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2 product in such country, right?

3 A. You left out the capital L and the
4 capital P.

5 Q. Sure, I did. But the actual words,
6 words matter, right?

7 MS. SIMSON: Objection to form.

8 Argumentative.

9 A. And we have been through the fact
10 that I believe the correct interpretation of
11 licensed patent rights covering such licensed
12 product is a patent covering such product in
13 such country. And so I do not see a
14 discrepancy in my position, in my report in the
15 language.

16 Q. Right, but the way we got here was
17 you had said that Novartis must get a patent.
18 There is no requirement under the agreement,
19 under anyone's interpretation, that Novartis
20 has to get a patent, right?

21 MS. SIMSON: Objection to form.

22 Mischaracterizes the record. And
23 mischaracterizes her testimony.

24 A. I was saying that Incyte's disputed
25 position argues that in the absence of Novartis

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2 getting a patent, they are not going to get
3 paid, and that is a requirement to get the
4 patent in order to get paid beyond the ten
5 years, and that is what it is all about.

6 Q. If Incyte obtained a patent today
7 that extended the term of the generic-free term
8 of the products out to 2040 --

9 A. Right.

10 Q. -- that would be to the benefit of
11 both parties, right?

12 MS. SIMSON: Objection to form. And
13 vague as to location.

14 A. I would argue it would be to the
15 benefit of both parties. The collaboration is
16 to the benefit of both parties.

17 Q. Did anyone say that Incyte needed to
18 get a patent that goes up to 2040?

19 MS. SIMSON: Objection to form.

20 A. If Incyte had not already had a
21 patent, then someone would need to go get a
22 patent to prevent the generic entry and keep
23 the royalties going. Incyte already had a
24 patent at the start of this discussion.

25 Q. Getting additional patent protection

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2 would be to both parties' benefit, right?

3 MS. SIMSON: Objection to form.

4 A. Yes.

5 Q. But there's no requirement to get
6 additional patents, correct?

7 MS. SIMSON: Objection to form.

8 Vague. Object to the extent you're asking
9 for a legal conclusion or legal opinion.

10 A. I think you're trying to say that
11 I'm making a blatant statement that there is a
12 requirement, I'm saying there is a requirement.
13 You're positing that there is a requirement. I
14 am objecting to the position that there is a
15 requirement for the royalties to be paid.

16 You're distorting my position by
17 posing it as an absolute requirement, and
18 neither side had an absolute requirement, but
19 the royalties are dependent on the existence of
20 any patent, in contrast to Incyte's position
21 that in the absence of a Novartis patent, they
22 stop.

23 Q. What's a blocking patent?

24 MS. SIMSON: Objection to form.

25 Foundation.

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2 A. I'm not a patent attorney. So I
3 would defer to somebody who is to make a good
4 definition of a blocking patent.

5 Q. Well, you would agree that Incyte's
6 own patents cannot block its sales of Jakafi in
7 the United States, correct?

8 MS. SIMSON: Objection to form, and
9 to the extent you're asking for a legal
10 conclusion or legal opinion, I would object
11 on that basis.

12 A. Incyte has the right, absent this
13 agreement, to exclude others. Under this
14 agreement, Novartis and Incyte are partners,
15 and they have the right to exclude others.

16 Q. So let's break that up for a second.
17 Outside the agreement, we're in agreement that
18 Incyte's own patents cannot block its sales of
19 Jakafi in the United States, correct?

20 MS. SIMSON: Objection to form.

21 A. I think that statement is correct.
22 Independent of the agreement.

23 Q. Sure.

24 A. As a hypothetical, all that
25 business, yes.

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2 Q. So in the context of the agreement,
3 are you saying that Incyte's patents block its
4 sales of Jakafi in the United States?

5 MS. SIMSON: Objection to form.
6 Mischaracterizes her testimony.

7 A. I never said that.

8 Q. I misunderstood then. Okay. You
9 said, then -- let me ask you affirmatively
10 then.

11 In the context of the agreement,
12 Incyte's own patents cannot block its sales of
13 Jakafi in the United States, correct?

14 MS. SIMSON: Objection to form, and
15 to the extent asking for a legal opinion.
16 Or legal conclusion.

17 A. Incyte has patents that cover the
18 product, and under this agreement they are
19 permitted to sell under those patents.

20 Q. Permitted by who?

21 MS. SIMSON: Objection to form.

22 A. By the fact they have a patent.

23 Q. Do they need a patent to sell it?

24 A. No.

25 MS. SIMSON: Objection to form.

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2 BY MR. STOPS:

3 Q. So its own patents don't block its
4 sales of Jakafi in any context, right?

5 MS. SIMSON: Objection to form, and
6 to the extent asking for a legal conclusion
7 or legal opinion.

8 A. I think you are correct that I'm not
9 saying that its own patents blocked it from
10 selling. I've never said that.

11 Q. And, similarly, a hypothetical
12 Novartis-owned patents -- a hypothetical
13 Novartis-owned patent would not be able to
14 block Novartis's sales of Jakavi, right?

15 MS. SIMSON: Objection to form.

16 A. Actually, you know, there are
17 circumstances in which in either case that
18 could be true. If they granted an exclusive
19 license to somebody else, they would have given
20 up the rights to sell under their own patents.

21 Q. Right. That's -- I can understand
22 the hypothetical. That's why I specified
23 Jakavi where Novartis has the right to sell.
24 So in the context here a Novartis-owned patent
25 would not be able to block Novartis's sales of

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2 Jakavi, right?

3 MS. SIMSON: Objection to form, to
4 the extent asking for a legal conclusion or
5 legal opinion.

6 A. And the same form applies to Incyte.
7 That is, if Incyte had given somebody else an
8 exclusive right in the United States, they
9 would be precluded from selling in the United
10 States because they would have given the rights
11 to somebody else.

12 Q. But they didn't, right?

13 A. Right. And your questions were the
14 same sort of hypothetical. In the
15 hypothetical, this that and the other. So I'm
16 just clarifying that there are circumstances
17 that it could have applied, but what we're
18 focused on is in indeed this agreement.

19 Q. And under this agreement, Incyte's
20 own patents don't block its sales of Jakafi?

21 MS. SIMSON: Objection to form.

22 A. You have said that repeatedly.

23 MS. SIMSON: Eric, we've been going
24 a little over an hour. If we can take a
25 short break.

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2 MR. STOPS: Doctor, do you need a
3 break?

4 THE WITNESS: I think it's lovely to
5 have a short break.

6 MR. STOPS: Can we keep this under
7 20 minutes?

8 MS. SIMSON: I think we can keep it
9 to ten.

10 MR. STOPS: Please.

11 THE WITNESS: Thank you.

12 THE VIDEOGRAPHER: Microphone.

13 We are going off the record. The
14 time is 4:49 p.m.

15 (Recess.)

16 THE VIDEOGRAPHER: We are back on
17 the record. The time is 5:04 p.m.

18 BY MR. STOPS:

19 Q. Dr. Pullan, what prevents generic
20 competition for a pharmaceutical product? I
21 know it's a broad question, but generally
22 speaking.

23 MS. SIMSON: Objection to form.

24 A. Generic products are broadly
25 excluded by a valid patent.

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2 Q. You'd agree that license -- licenses
3 to patents are typically the biggest driver of
4 deal value, right?

5 A. No.

6 MS. SIMSON: Objection to form.

7 Q. You don't agree with that?

8 A. I say they are a piece of value, a
9 very significant piece, but if you look in my
10 rebuttal report, I believe I state that if they
11 were the only portion or the majority portion,
12 that we would pay the same thing for a
13 preclinical compound as a Phase 3 compound, and
14 the difference is data.

15 Q. Would you open your opening report,
16 please.

17 A. Yes.

18 Q. That's Exhibit 1002. Page 6, second
19 full paragraph. I'll read you the last
20 sentence. It says: "Patents are generally
21 viewed as the largest value driver."

22 Do you see that?

23 A. I do see that. That was a mistake.
24 I should have said are generally viewed as one
25 of the largest value drivers.

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2 Q. The commercial life of a product
3 ends when there is generic competition, right?

4 A. No, the high value of commercial
5 life of a product decline.

6 UNIDENTIFIED VOICE: Some of cases
7 don't require --

8 MR. STOPS: Is that coming out of
9 the Zoom? Can we go off the record for a
10 second?

11 MS. SIMSON: Yeah, let's go off the
12 record just for a moment.

13 (Multiple speakers.)

14 MR. STOPS: -- whoever is saying
15 this.

16 THE VIDEOGRAPHER: We are going off
17 the record. The time is 5:06 p.m.

18 (Recess.)

19 THE VIDEOGRAPHER: We are back on
20 the record. The time is 5:07 p.m.

21 BY MR. STOPS:

22 Q. And what do you mean by the high
23 value commercial life of a product?

24 A. So for small molecules, as opposed
25 to biologics, the entry of a generic in recent

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2 years has meant a very rapid decline of both
3 the sales price and sales volume sold by the
4 seller who is there before the generic.

5 Q. Don't branding companies tend to
6 increase their price initially when there's
7 generic competition?

8 MS. SIMSON: Objection to form.

9 A. I think they often increase their
10 price in anticipation of the loss. I do not
11 believe they increase their price after the
12 loss or certainly not substantial -- prices
13 drop.

14 Q. So there are a group, maybe small
15 group of patients who will pay for a brand
16 product regardless, right?

17 MS. SIMSON: Objection to form.

18 A. There are sometimes a small group of
19 people who will pay for a branded product.
20 Increasingly, their insurance will not cover
21 that purchase price. The insurance will push,
22 even in the United States, extremely so
23 elsewhere, will push for the cheaper generic
24 product.

25 Q. But isn't the incentive to increase

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2 the price since the volume is going down and
3 there is -- I think there was a small group of
4 what they would call inelastic purchasers?

5 MS. SIMSON: Objection to form.

6 A. Price is a pretty complicated
7 decision, and I should not weigh in on price
8 because I have never set the price of a single
9 drug. There are curves that are worked on to
10 try to figure out the optimal price. The point
11 for generic entry is that most of the value is
12 lost.

13 Q. And generic -- generic entry takes
14 place when there is a loss of exclusivity for
15 the product, correct?

16 MS. SIMSON: Objection to form.

17 A. Generic entry need not take place at
18 the time when there is loss of exclusivity, but
19 does often take place when there is a loss of
20 exclusivity.

21 Q. In the context of commercialization
22 of a pharmaceutical product, know-how doesn't
23 delay the entry of generic competition,
24 correct?

25 MS. SIMSON: Objection to form.

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2 A. There are regulatory recognitions of
3 data exclusivity, which is a form of know-how,
4 which can indeed delay generic entry. That is,
5 the FDA and other bodies can offer exclusivity
6 based on the data.

7 Q. Right. That would fall under
8 regulatory exclusivity, correct?

9 A. That is correct.

10 Q. So leaving aside exclusivities,
11 patent exclusivities, regulatory exclusivities,
12 know-how itself doesn't extend the commercial
13 life of a product, correct?

14 MS. SIMSON: Objection to form.

15 A. Generally not. There, again, can be
16 exceptions if there is a trade secret, which is
17 essential to being able to practically practice
18 that product manufacturer or -- that's probably
19 the most likely, but correct.

20 Q. Exceptions would be hard-to-make,
21 hard-to-formulate price?

22 A. Correct.

23 Q. And know-how is most significant at
24 the beginning of an agreement when the asset is
25 being transferred, right?

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2 MS. SIMSON: Objection to form.

3 A. There is know-how transfer at the
4 beginning of most agreements. Know-how
5 continues to be developed under the
6 collaboration and therefore the most important
7 know-how may come late in an agreement rather
8 than at the time of signing an agreement. The
9 most important know-how for the value of the
10 product, the label, the success of the drug
11 need not come at the beginning of an agreement.

12 Q. Would you agree that the know-how is
13 most significant at the beginning when the
14 asset's being transferred?

15 MS. SIMSON: Objection to form.

16 A. No, I just said no. I said may or
17 may not, often is not. If I do a deal --

18 Q. You still have -- I'm sorry. Go
19 ahead.

20 A. At preclinical and during the
21 collaboration, I figure out the best patient
22 population for which this drug will be
23 successful. That may be the most valuable
24 thing. The difference between two very similar
25 drugs, Keytruda and Opdivo, which are huge

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2 successes, is largely the distinction in the
3 clinical development programs the two companies
4 ran, such that the demonstration of efficacy in
5 certain tumor types, certain patient
6 populations was developed late in life up to
7 and after approval, and that has enabled
8 Keytruda to have much higher sales than Opdivo.
9 So valuable know-how can occur throughout the
10 life of the product.

11 Q. Under your right hand is your
12 opening report, Pullan Exhibit 1002, second
13 full paragraph, Page 6, middle of the
14 paragraph. I'll read you from it: "Know-how
15 is most significant at the beginning when the
16 asset is being transferred."

17 Do you see that?

18 A. Yes.

19 Q. Did I read that correctly?

20 A. Yes.

21 Q. Do you agree that in the context
22 of -- sorry. Do you agree that only rarely is
23 know-how a significant barrier to market
24 competition?

25 A. When I was writing this I was

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2 thinking of the know-how that is in the
3 licensed IP. This was talking about the
4 know-how brought into the agreement, and if --
5 if you think in those terms or if you think in
6 extremely broad terms of all know-how, then
7 this statement is correct.

8 However, the data that is generated,
9 the know-how of how best to use the drug is of
10 substantial value and is often developed later
11 than the start of the agreement.

12 Q. Under the agreement -- the 2009
13 agreement between Incyte and Novartis, that
14 second category, know-how that is later
15 developed, that's jointly owned by the parties,
16 correct?

17 A. I believe that's correct.

18 Q. Okay. We can go back to that in a
19 minute, but you'd agree that financial
20 investments don't prevent generic competition
21 directly, correct?

22 MS. SIMSON: Objection to form.

23 A. The -- dollars, per se, are not a
24 barrier to, but wise investment generates data
25 that can indeed be a barrier to competition.

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2 Smart marketing can also be a barrier to
3 competition.

4 Q. In terms of preventing switches to
5 generic alternatives?

6 A. Yes. Physician loyalty, custom and
7 practice by physicians of how they are
8 comfortable with a medicine, yes.

9 Q. Okay. You also discussed the
10 meaning of the term "covering" with a capital C
11 in your reports, correct?

12 A. Yes.

13 Q. And you offer the opinion that
14 covering has a commonplace definition, correct?

15 MS. SIMSON: Objection to form. And
16 also mischaracterizes the scope of his
17 opinion.

18 A. Covering is defined similarly in
19 many, many agreements.

20 Q. And is that what you mean by
21 commonplace, defined similarly in many
22 agreements?

23 MS. SIMSON: Objection to form.

24 A. I think so.

25 Q. Now, the definition that you offer

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2 in your report for covering as a commonplace
3 definition, that isn't based on the words of
4 the 2009 agreement, correct?

5 MS. SIMSON: Objection to form, and
6 to the extent --

7 A. Can you point me to where you're
8 talking about?

9 Q. Yes. It is your opening report at
10 Page 9, and I believe it's at the bottom of the
11 page. Yes, spanning on to Page 10. Sorry.

12 Would you look at the agreement at
13 Section 1.23 on Page 6, the definition of
14 cover, covering, or covered?

15 A. Okay.

16 Q. Actually, before we get to that, you
17 can leave that in front of you, I'll have a
18 question for you on that in a second, but you
19 understand what a patent assignment is,
20 correct?

21 MS. SIMSON: Objection to form.

22 A. Yes.

23 Q. The -- sorry. A patent inventor can
24 assign his or her rights in a patent to a
25 person or company, correct?

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2 A. Correct.

3 Q. So a person or company can own a
4 patent, correct?

5 A. Yes.

6 Q. And the owner of a patent can't
7 infringe the patent, right?

8 MS. SIMSON: Objection to form.

9 A. Unless they license it exclusively
10 to someone else or assign it, yeah.

11 Q. If they assigned it, they wouldn't
12 own it anymore, right?

13 A. Right.

14 Q. The -- with respect to the royalty
15 paid by Incyte under 8.3(b)(i), I think we've
16 established that the relevant product is the
17 drug Jakafi, as the parties currently sell
18 products, correct?

19 A. We've talked about that as pertinent
20 to the royalty that Incyte pays Novartis.

21 Q. And the word "person" is also
22 defined in the agreement, right? And that's
23 Section 1.88. And a person means any natural
24 person, general or limited partnership,
25 corporation, limited liability company, limited

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2 liability partnership, firm, association, or
3 organization, or other legal entity, correct?

4 A. That is what it says.

5 Q. Am I person under the agreement?

6 A. You are a person as referred to --

7 Q. In the definition?

8 A. -- in the definition. You are not a
9 party to the agreement. Would that we were,
10 yes.

11 Q. And you are a person pursuant to the
12 definition in the agreement, correct?

13 A. I am --

14 MS. SIMSON: Objection to form.

15 A. -- a person.

16 Q. Novartis is a person, pursuant to
17 the definition in the agreement?

18 A. Yes.

19 Q. And Incyte is a person pursuant to
20 the definition in the agreement.

21 And selling a product under the
22 agreement constitutes commercialization,
23 correct?

24 MS. SIMSON: Objection to form, and
25 to the extent seeking legal opinion.

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2 A. I believe commercialization may be
3 defined more broadly as selling, including
4 marketing, for instance.

5 Q. Yes, I was just confirming that it
6 includes selling, but we can look at the
7 definition. It's 1.19 on Page 5 of the 2009
8 agreement.

9 And that includes selling, right?

10 A. Yes.

11 Q. So Incyte doesn't have a license to
12 the Incyte patent rights that claim
13 ruxolitinib, correct?

14 MS. SIMSON: Objection to form, and
15 to the extent seeking a legal opinion or
16 legal conclusion.

17 A. Incyte has a license under the
18 agreement to practice certain activities under
19 the Incyte patents, as well as under the
20 Novartis patents.

21 Q. Incyte doesn't have a license to the
22 Incyte patents, does it?

23 A. It has --

24 MS. SIMSON: Objection to form.

25 A. -- a license under the agreement to

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2 do activities.

3 Q. My question was: Incyte doesn't
4 have a license under the Incyte patent rights,
5 correct?

6 MS. SIMSON: Objection to form.
7 BY MR. STOPS:

8 Q. And tell me where you are in the
9 agreement.

10 A. I'm under license grant.

11 MS. SIMSON: Just for the record,
12 Dr. Pullan, you're on Page 18 of the
13 agreement?

14 THE WITNESS: Yes.

15 MS. SIMSON: And Section 2.1 or 2.2.

16 THE WITNESS: 2.1(b).

17 A. And then Incyte has permission to
18 develop an alternative compound that could
19 indeed come from Novartis.

20 Q. Sorry where are you looking?

21 A. "Potential JAK backups."

22 Q. Will you tell me a page and a
23 section?

24 A. Page 36.

25 Q. Page 36, section?

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2 A. 4.5.

3 Q. Okay. So is that a license from

4 Incyte under the Incyte patent rights?

5 A. It is an expectation that under the

6 Incyte patent rights or the Novartis patent

7 rights either party may develop a JAK2

8 inhibitor.

9 Q. That doesn't say anything about a

10 license from Incyte to Incyte to all the Incyte

11 patent rights, correct?

12 A. Correct.

13 MS. SIMSON: Objection to form.

14 BY MR. STOPS:

15 Q. So as far as you're aware, Incyte

16 does not have a license to the Incyte patent

17 rights that claim ruxolitinib, correct?

18 MS. SIMSON: Objection to form, and

19 to the extent seeking a legal opinion or a

20 legal conclusion.

21 A. The primary license grant does not

22 specify a license to Incyte under the Incyte

23 patents. Incyte, under this agreement, is

24 granted rights to do certain activities --

25 rights and obligations to do certain

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2 activities. And the agreement permits those
3 under the umbrella of the patents that are in
4 the agreement. That is, the patents cannot be
5 used to block the activities which are ascribed
6 to the two parties in the agreement.

7 Q. So are you talking about things
8 outside of patent rights --

9 MS. SIMSON: Objection to form.

10 BY MR. STOPS:

11 Q. -- like know-how, for example?

12 A. Know-how and the other parties'
13 patents.

14 Q. Right. And make sure I
15 understood -- you said Incyte, under this
16 agreement, is granted rights due to certain
17 activities.

18 My question was just: Incyte
19 doesn't have a license under the Incyte patent
20 rights, so just the Incyte patent rights, that
21 claim ruxolitinib or Jakafi, correct?

22 MS. SIMSON: Objection to form, and
23 to the extent seeking a legal opinion or a
24 legal conclusion.

25 A. I think I concur, but I think the

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2 agreement talks of a broader relationship than
3 just the patents.

4 Q. Okay. And Incyte doesn't need a
5 license to the Incyte patent rights to sell
6 Jakafi, right?

7 A. In the territories where it is not
8 licensed, those rights to Novartis.

9 Q. That's -- Jakafi only exists in the
10 United States and its territories, right?

11 MS. SIMSON: Objection to form.

12 A. One could imagine the brand name
13 could if you get into hypotheticals, yes.

14 Q. Sure. Right. So Incyte doesn't
15 need a license to the Incyte patent rights to
16 sell Jakafi in the United States, right?

17 MS. SIMSON: Objection to form.

18 A. I think I answered that already.

19 Q. Yes.

20 A. Yes.

21 Q. Incyte's -- there aren't any
22 Novartis patent rights that claim ruxolitinib
23 or Jakafi, right?

24 MS. SIMSON: Objection to form, and
25 object to the extent seeking a legal

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2 opinion or legal conclusion.

3 A. And I am not in a position to know
4 there isn't a broad claim in one of their other
5 JAK patents that may overdominate rux. I don't
6 know.

7 Q. If Novartis had such a claim, do you
8 think they would have raised it by now?

9 MS. SIMSON: Objection to form.
10 Argumentative.

11 A. I don't know. When it arrives, I
12 don't know.

13 Q. Novartis does not have a license to
14 sell ruxolitinib in the United States, correct?

15 MS. SIMSON: Objection to form.

16 A. That is correct.

17 Q. And Novartis doesn't sell
18 ruxolitinib in the United States, correct?

19 A. That is correct.

20 Q. Now, in the definition of cover on
21 Page 6, Section 1.23 of the 2009 agreement,
22 there is no mention of the patent owner,
23 correct? It just refers to licenses, correct?

24 MS. SIMSON: Objection to form, and
25 object to the extent seeking legal opinion

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2 or legal conclusion.

3 A. But for a license.

4 Q. And it doesn't refer to ownership,
5 correct?

6 A. Correct.

7 MS. SIMSON: Objection to form.

8 BY MR. STOPS:

9 Q. And the parties could have drafted
10 cover, covering, and covered differently to
11 include ownership, correct?

12 MS. SIMSON: Objection to form.

13 A. Parties could have drafted the form
14 differently, yes.

15 Q. And you've reviewed the 2019
16 agreement between Incyte and Novartis, correct?

17 A. I have reviewed the 2019 agreement.

18 MS. SIMSON: Just, did you say 2009
19 or 2019?

20 MR. STOPS: '19, and on second
21 thought.

22 MS. SIMSON: I just wanted to make
23 sure that wasn't a misstatement.

24 MR. STOPS: Yes.

25 (Pullan Exhibit 1007, 2019 Agreement

1 L. Pullan, Ph.D. - Highly Confidential
2 between Incyte and Novartis, marked for
3 identification.)

4 Q. I'm handing you what's marked as
5 Exhibit 1007.

6 A. Yes.

7 Q. And this is the 2019 agreement
8 between Incyte and Novartis, correct?

9 A. Yes.

10 MS. SIMSON: I'm just going to note
11 for the record that this agreement is
12 between Novartis International
13 Pharmaceutical Limited, not Novartis Pharma
14 AG, which is just a different name than the
15 current plaintiff in this action.

16 MR. STOPS: And just before I
17 forget, I think you may have done this
18 already, let's mark this transcript highly
19 confidential.

20 MS. SIMSON: We've already done
21 that, and I have no objection to that.

22 MR. STOPS: Great. I just realized
23 we now put in a couple of confidential
24 agreements.

25 BY MR. STOPS:

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2 Q. Now, unfortunately, this one does
3 not have specific section numbers for
4 definitions, but there is a definition section
5 at Section 1.1, that include a number of
6 definitions.

7 A. Correct.

8 Q. And cover is set forth on Page 3 in
9 the definitions section.

10 A. Yes.

11 Q. The version or the definition of
12 cover, covered, or covering in the 2019
13 Incyte-Novartis agreement, which is Novartis
14 Exhibit 1007, specifically calls out ownership,
15 correct?

16 MS. SIMSON: Objection to form, and
17 to the extent asking for a legal opinion or
18 a legal conclusion.

19 A. In the absence of ownership or a
20 license.

21 Q. So had the definition of covered
22 from the 2019 agreement, Exhibit 1007, been
23 used instead of the definition of covering in
24 the 2009 agreement, would Incyte's sales of
25 Jakafi in the United States have been covered?

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2 MS. SIMSON: Objection to form.

3 Objection to the extent seeking a legal
4 opinion or a legal conclusion. Also
5 incomplete hypothetical.

6 A. I think it could have been covered.

7 I think it would have been covered.

8 Q. Okay. Now, in -- I think we
9 established this earlier. Novartis sells
10 Tabrecta, which is the cMET inhibitor, pursuant
11 to a license under the 2009 agreement, correct?

12 MS. SIMSON: Objection to form, and
13 reiterate my prior objection with respect
14 to the Tabrecta.

15 BY MR. STOPS:

16 Q. Novartis pays a royalty to Incyte on
17 sales of Tabrecta, correct?

18 A. Yes.

19 Q. And the royalty term for Tabrecta is
20 also governed by Section 8.3(c) of the
21 agreement, right?

22 MS. SIMSON: Same objections.

23 A. Yes.

24 Q. You aren't offering any opinions
25 regarding the relevance of Tabrecta royalties

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2 in this litigation, correct?

3 A. That is definitely correct.

4 Q. But you're aware that Novartis did
5 obtain a -- an Orange Book listed patent for
6 Tabrecta, correct?

7 MS. SIMSON: Objection to form, and
8 reiterate my objections with respect to the
9 relevance of Tabrecta in this lawsuit.

10 A. And I did not study the Novartis
11 patents on Tabrecta, as I did not see them as
12 relevant to the questions at hand.

13 Q. Did Novartis generate or accumulate
14 any Novartis know-how during the course of the
15 2009 agreement?

16 MS. SIMSON: Objection to form.

17 A. During --

18 MS. SIMSON: Vague with respect to
19 what you mean by the course of the 2009
20 agreement.

21 A. Right. During the course of the
22 collaboration?

23 Q. I misspoke. Yes.

24 A. Okay. I'm sure Novartis created a
25 vast array of know-how during the

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2 collaboration.

3 Q. Was any of the know-how that was
4 created or generated by Novartis, did it
5 constitute Novartis know-how or joint IP?

6 MS. SIMSON: Objection to form.
7 Calls for speculation. Object to the
8 extent seeking a legal opinion or a legal
9 conclusion.

10 BY MR. STOPS:

11 Q. Let's take a look at the agreement.
12 I think the relevant section for this is
13 actually going to be Section 7.1(b).

14 MS. SIMSON: Counsel, just for the
15 record, you're looking at Exhibit 1001,
16 right?

17 MR. STOPS: Correct. Page 46,
18 Section 7.1(b).

19 MS. SIMSON: Thank you.

20 Q. Now, the -- the second clause:
21 "All inventions or discoveries made or
22 information created jointly by each party or
23 affiliates, employees, independent contractors
24 in the course of conducting such" -- sorry --
25 "conducting activities under this agreement,

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2 together with all intellectual property rights
3 therein, shall be jointly owned by the parties
4 and are joint IP."

5 Do you see that?

6 A. I do, but I also see above where it
7 says: "All inventions made" --

8 Q. -- independently?

9 A. -- "independently are not joint IP,
10 but shall be owned by each party."

11 Q. Do you know which -- what know-how
12 under the agreement is joint versus individual?

13 MS. SIMSON: Objection to form.

14 A. No, but I can imagine there are
15 both. In fact, there would be independent
16 activities and there would be joint activities.

17 Q. Okay.

18 A. And either could lead to IP or
19 inventions.

20 Q. Okay. And I think we discussed
21 earlier that each licensing deal is unique,
22 correct?

23 A. I have said that.

24 Q. If -- well, I guess if licensing
25 agreements were all the same, Pullan Consulting

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2 wouldn't have any business, right?

3 A. I'd be out of work, yes. Yes.

4 Q. And companies hire you because
5 pharmaceutical agreements are bespoke and have
6 to be negotiated individually, right?

7 MS. SIMSON: Objection to form.

8 A. They are definitely generally
9 negotiated individually. There are licenses
10 that are cookie cutters. They tend to be by
11 more service providers who provide the same
12 service under multiple licensing agreements,
13 but the majority of things, certainly, I work
14 on and the majority of agreements are each
15 individually negotiated.

16 Q. You've been involved in research and
17 development agreements, correct?

18 A. I've been involved in research and
19 development agreements.

20 Q. Would you consider the agreement
21 between Incyte and Novartis, the 2009
22 agreement, Exhibit 1001, to be a research and
23 development agreement?

24 MS. SIMSON: Objection to form, and
25 to the extent asking for a legal conclusion

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2 or legal opinion.

3 A. The primary activities under this
4 agreement are development and commercialization
5 that, as I remember, there is the right to do
6 research, so one could characterize it that
7 way. It is principally a co-development
8 collaboration with territorial rights for
9 commercialization.

10 Q. I think we got to this concept a
11 little bit before. Is there a difference --
12 well, what do you consider to be the difference
13 between the end of -- of market exclusivity and
14 just a general loss of exclusivity for a
15 product, or are those synonymous terms?

16 MS. SIMSON: Objection to form.

17 A. They are largely synonymous terms.

18 Q. Now, the commercial life of a
19 product, however, can go on beyond the loss of
20 exclusivity, correct?

21 A. We discussed this --

22 MS. SIMSON: Objection to form.

23 A. There can be sales after a generic
24 enters.

25 Q. In leaving aside the 2009 agreement,

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2 in general, do -- does the licensee pay
3 royalties until the end of exclusivity or until
4 the end of a commercial life of a product?

5 MS. SIMSON: Objection to form.

6 Incomplete hypothetical, and to the --
7 object to the extent seeking legal opinion
8 or legal conclusion.

9 A. There are licenses that last as long
10 as there are sales. This is not one. The
11 pattern in the 2009 agreement of duration of
12 royalties is the most common pattern,
13 consisting of last valid claim covering the
14 product, a number of years from first
15 commercial sales, and ten years is by far the
16 most common term, and regulatory exclusivity.
17 With regulatory exclusivity being less common
18 than the other two, but also highly common.

19 Q. Okay. So in your opinion, some
20 agreements go to a specific loss of exclusivity
21 and some agreements can go out to the end of
22 the commercial life of a product; is that
23 accurate?

24 MS. SIMSON: Objection to form.

25 A. And some --

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2 MS. SIMSON: And mischaracterizes
3 her testimony.

4 A. And some agreements can have a fixed
5 term, some agreements have no royalties, some
6 agreements are quite different from other
7 agreements.

8 Q. Okay.

9 A. We're paying attention to this
10 agreement.

11 Q. Okay. There's lots of different
12 ways to generate the end of a royalty term?

13 MS. SIMSON: Objection to form.

14 A. The majority of cases have a form
15 almost identical to what is in the 2009
16 agreement.

17 Q. Why don't all agreements simply go
18 out to the end of the commercial life of a
19 product?

20 MS. SIMSON: Objection to form.

21 A. The -- it is on a
22 product-by-product and country-by-country basis
23 typically, right, the paying of royalties. And
24 one can easily imagine that there could be one
25 prescription in a country, and you would have

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2 to file an audit report and pay a royalty.
3 It's a tremendous burden and there might be no
4 economic value of that one prescription, i.e.,
5 no profit, it costs you more to sell the darn
6 stuff than you collect. Therefore, it is not
7 economically sensible in many cases, to have
8 a --

9 Q. Infinite.

10 A. -- infinite royalty.

11 Q. Okay. So in the -- in the 2009
12 agreement, Section 8.3(c), do you -- in your
13 opinion, what date does Incyte's royalty
14 payments to Novartis pursuant to
15 Section 8.3(b)(i) end?

16 MS. SIMSON: Objection.

17 A. The latter.

18 MS. SIMSON: Sorry.

19 THE WITNESS: Thank you.

20 MS. SIMSON: Objection to form, and
21 to the extent seeking a legal opinion or
22 legal conclusion. Go ahead.

23 A. The latter of the last-to-expire
24 patent claim covering the product in the
25 country. At the time the parties were

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2 negotiating, Incyte had the composition of
3 matter patent, and that patent was discussed as
4 having an expiration date of -- it varied a
5 little bit in the discussions, but, generally,
6 2027. If there are additional patents, it can
7 go longer.

8 (Pullan Exhibit 1008, Agreement
9 Between Incyte and Eli Lilly, marked for
10 identification.)

11 BY MR. STOPS:

12 Q. I'm handing you what's marked as
13 Exhibit Pullan 100 -- Exhibit Pullan 1008.
14 Exhibit 1008 is an agreement between Incyte and
15 Eli Lilly, correct?

16 A. That is what it says.

17 Q. Have you reviewed this exhibit?

18 A. Lightly, yes.

19 Q. If you look at the date of this
20 agreement, it was executed -- and this is
21 Page 1 of the -- of Exhibit 1008.

22 At the top it says it was entered
23 into as of the 18th day of December 2009.

24 Do you see that?

25 A. Yes.

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2 Q. That's a few weeks after the
3 execution of the agreement between Incyte and
4 Novartis, correct?

5 A. Yes.

6 Q. And if you go to Section 7.3,
7 Royalties, on Page 41 of the agreement,
8 Section 7.3(a) specifies royalties from Eli
9 Lilly to Incyte.

10 Do you see that?

11 A. Yes.

12 Q. The royalty term appears at
13 Section 7.3(b) of the agreement.

14 A. Yes.

15 Q. Okay. And Section 7.3(b) royalty
16 term is structured similarly to the royalty
17 term provision in the 2009 Incyte-Novartis
18 agreement at Section 8.3(c), correct?

19 MS. SIMSON: Objection to form.

20 A. There is --

21 MS. SIMSON: And objection to the
22 extent it calls for a legal opinion or
23 legal conclusion.

24 A. There is an important distinction.
25 There is, instead of the term, "licensed patent

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2 rights," there is the term "Incyte patent
3 rights." But the three tiers of duration are
4 comparable.

5 Q. Does Lilly pay royalties under this
6 agreement on any Eli Lilly patent rights?

7 A. I don't remember if there are
8 provisions of joint and -- and such -- I don't
9 remember if there's provisions on joint
10 ownership of patent rights and combination
11 products and other such things that could
12 result in Lilly paying on things where Lilly
13 owns IP.

14 MS. SIMSON: Dr. Pullan, you can
15 take a look at the agreement if you need
16 to.

17 THE WITNESS: It would take me a
18 while.

19 MS. SIMSON: You're entitled to.

20 BY MR. STOPS:

21 Q. Does it matter?

22 MS. SIMSON: Objection to form.

23 A. Does it matter to Lilly? Does it
24 matter to Incyte?

25 Q. No. Does it matter to the

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2 interpretation of the agreement?

3 MS. SIMSON: Objection to form.

4 A. The agreement --

5 MS. SIMSON: And objection to the
6 extent it calls for legal opinion or legal
7 conclusion of this Lilly agreement.

8 A. Does what matter? The legal
9 agreement matters, and if there are definitions
10 that say there are joint products and such,
11 there may indeed be provisions that say there's
12 an obligation to pay under joint IP.

13 Q. So --

14 A. I can't remember all of these
15 agreements.

16 Q. No. So I wasn't sure if you were
17 going to say it mattered or not. Let's take a
18 look at Page 6 of the 2009 Eli Lilly agreement,
19 Exhibit 1008. There is a definition 1.33
20 Incyte patent rights?

21 A. Yes.

22 Q. The definition reads: "All patent
23 rights that are, A, controlled by Incyte or any
24 of its affiliates as of the effective date or
25 during the term, and, B(i), covers a licensed

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2 compound or licensed product, a composition
3 containing a licensed compound, a formulation
4 containing a licensed product" -- and continues
5 on to say -- "or necessary to commercialize"
6 language.

7 Do you see that?

8 A. Yes.

9 Q. In your reading of this, Section B,
10 which is written in the passive voice without
11 an explicit actor, does that cover Eli Lilly
12 activities?

13 MS. SIMSON: Objection to form.

14 Objection to the extent asking for her to
15 have a legal opinion or legal conclusion
16 with respect to this definition.

17 A. Tell me what section you're
18 referring to that has a passive voice now.
19 Where are we in this agreement?

20 Q. When you say "this agreement" which
21 one you're asking?

22 A. The one you are asking the question
23 about.

24 Q. The Eli Lilly, Page 6, Section --

25 A. No, you're asking about the passive

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2 form; is that what you're talking about?

3 Q. Sorry. I'll rephrase that.

4 Page 6, Section 1.33 of the Eli
5 Lilly agreement, Section B of that definition
6 says: "Covers a licensed compound." There is
7 no explicit actor in Section B.

8 So my question for you is: Does
9 that mean, in your opinion, that it includes
10 Eli Lilly patent rights?

11 MS. SIMSON: Objection to form.

12 Calls for speculation -- object to the
13 extent asking her to give a legal opinion
14 or legal conclusion with respect to this
15 definition.

16 A. This differs from what's in the 2009
17 Novartis agreement in a number of ways. Among
18 them is it isn't licensed patent rights. It's
19 Incyte patent rights. If in the 2009
20 agreement, the parties had wanted to write
21 Incyte patent rights, they could have written
22 Incyte patent writes.

23 This agreement, they did write
24 Incyte patent rights. I believe it's also
25 different in that or otherwise necessary versus

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2 necessary and useful, if I remember correctly,
3 in the other agreement.

4 Q. So the lack of an explicit actor and
5 the use of passive voice doesn't --

6 A. What are you referring to as passive
7 voice? What --

8 Q. Oh, so -- it is -- it doesn't have
9 an actor.

10 A. We're saying the same thing twice?

11 MS. SIMSON: Objection to form.

12 BY MR. STOPS:

13 Q. By using the passive voice, it
14 doesn't have an actor.

15 MS. SIMSON: Objection to form. You
16 can answer that if you can.

17 A. After you asked me the last time I
18 went away and thought about my mother teaching
19 English, and the covers, etc., is not a passive
20 voice. That's an active verb. So as I
21 understand the words "passive voice" as used in
22 grammar, I don't see a passive voice.

23 Q. It doesn't include a -- you are
24 correct. In this -- in Section 1.33, there is
25 no passive voice. It does not have an explicit

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2 actor.

3 A. Two different concepts.

4 MS. SIMSON: Objection to form.

5 BY MR. STOPS:

6 Q. Yes. In the July 9 term sheet, the
7 language is: "Or that is acquired," which we
8 can -- it's a grammatical distinction.

9 MS. SIMSON: And just for the
10 record, I think the witness has taken out
11 the term sheet.

12 Is that correct, Dr. Pullan?

13 THE WITNESS: Yes.

14 BY MR. STOPS:

15 Q. Since -- so since you have --

16 A. Owned and control is an active
17 voice. Is acquired --

18 Q. Or developed is passive.

19 MS. SIMSON: Objection to form.

20 A. Actually --

21 MS. SIMSON: Or to the
22 characterization. And object to that
23 characterization, is what I said.

24 A. I'm not sure whether that is
25 technically a passive voice or not. If you

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2 said acquires or acquired, it would seem
3 active. And I don't know what the point of all
4 that is, regardless.

5 Q. Let's stick with the -- the lack of
6 an actor. In the July 9 term sheet that you
7 have in your hands, you read: "Or that is
8 acquired or developed" to include either party
9 because there is no specified actor.

10 A. Correct.

11 Q. I was just asking if in the Eli
12 Lilly agreement, Exhibit 1008, do you similarly
13 read Part B of the definition 1.33, where it
14 says: "Covers a licensed compound" to include
15 both Incyte and Eli Lilly because that
16 similarly does not include an explicit actor?

17 MS. SIMSON: Objection to form.

18 Objection to you asking her for a legal
19 opinion or legal conclusion with respect to
20 this Eli Lilly agreement.

21 A. I would argue that if I were reading
22 only Section B, I would assume it's included
23 the IP in the partnership. The distinction is
24 that this is Incyte patent rights.

25 In the other agreement, wherever it

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2 is in this pile of paper, that is not described
3 as Incyte patent rights. It is described as
4 licensed patent rights, and if you go to the
5 definition of licensed patent rights, it says:
6 Means patents. Again, it does not say: Means
7 Incyte patents.

8 Q. Wait. So I'm not sure if you just
9 mixed -- we were talking about the July 9 term
10 sheet.

11 A. And I was talking about the
12 agreement.

13 Q. And you were talking about the
14 agreement. So I don't think you've made that
15 similar lack of explicit actor argument about
16 the agreement.

17 A. Okay.

18 MS. SIMSON: I don't think that's
19 what she was saying. So I'm going to
20 object to the extent you're
21 mischaracterizing her testimony.

22 BY MR. STOPS:

23 Q. Then I don't know what we were
24 talking about then.

25 A. That's probably a universal feeling.

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2 Q. You take the position that the
3 royalty paid by Incyte to Novartis is a
4 "clawback" from the royalty paid by Novartis to
5 Incyte, right?

6 MS. SIMSON: Objection to the
7 characterization of her opinion. Objection
8 to form.

9 A. The phrase "clawback" was used by
10 Goldman Sachs working for Incyte. I interpret
11 the clawback as taking back. The phrase
12 "clawback" is used in other circumstances of
13 taking back moneys. And so I do interpret it
14 that way, but I didn't apply that; Goldman
15 Sachs and, presumably, Incyte applied that.

16 Q. The word "clawback" doesn't appear
17 in the final 2009 agreement, correct?

18 MS. SIMSON: Objection to form.
19 Argumentative.

20 A. The word "clawback" does not appear
21 in the final agreement. It appears in the
22 Incyte materials leading up to the agreement.

23 Q. It also doesn't appear in any term
24 sheet, right?

25 MS. SIMSON: Objection to form.

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2 Argumentative.

3 A. I do not believe it appears in any
4 term sheet.

5 Q. And the documents you're referring
6 to are internal documents that never went to
7 Novartis, correct?

8 MS. SIMSON: Objection to form.

9 A. There may have been the use of
10 "clawback" in some exchanges between the
11 parties. I cannot positively assert that there
12 are not.

13 Q. You agree that the parties could
14 have simply negotiated a lower royalty rate
15 from Novartis to Incyte and accomplished the
16 same thing, right?

17 MS. SIMSON: Objection to form.

18 A. Actually --

19 MS. SIMSON: Mischaracterizes the
20 record, and I also will object to the
21 extent you're asking for a legal opinion
22 and a legal conclusion.

23 A. I do not agree, because part of what
24 Novartis clearly talked about and appears in
25 the definition is an alignment of incentives,

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2 and that means the parties thought it was in
3 their best interest for Novartis to care about
4 the success of the U.S. sales. And that led,
5 at least in part contributed, to the creation
6 of a payment to Novartis on U.S. sales. And
7 that incentivized and resulted in -- in the
8 collaboration, many contributions from
9 Novartis -- that benefitted the U.S. sales and
10 benefitted both Incyte and Novartis.

11 Q. So if it was simply a clawback --
12 sorry. Are you arguing that it's not simply a
13 clawback because there's a lot more to it
14 because if it was just a clawback, it could
15 have been accomplished by a reduction in the
16 royalty rates Novartis --

17 A. It was.

18 MS. SIMSON: Objection to form.

19 MR. STOPS: I wasn't finished with
20 my question?

21 MS. SIMSON: Sorry, I apologize.

22 Were you done, Mr. Stops?

23 A. I'm sorry, finish your question,
24 please.

25 Q. So if it was simply a clawback, that

1 L. Pullan, Ph.D. - Highly Confidential
2 result could have been accomplished through a
3 lower royalty rate, correct?

4 MS. SIMSON: Objection to form.

5 Mischaracterizes her testimony and her
6 opinions.

7 A. The concept of clawback is one
8 characterization of what was included. The --
9 I would argue the more important consideration
10 is that this was a partnership where the
11 parties wanted to share in the risk and share
12 in the reward and wanted to create a
13 partnership that helped Incyte in the U.S. and
14 paid Incyte for Novartis's success outside the
15 U.S. And that reverse -- what is called in
16 this agreement a reverse royalty, was
17 structured to accomplish those benefits to both
18 Incyte and Novartis. And was important to
19 Novartis and was argued about in -- in the
20 early term sheets, taken in and out, the
21 numbers were changed, it was considered part of
22 the walkaway. It was an important term to
23 Novartis.

24 It was accepted by Incyte. It
25 aligned the interests of the parties to expand

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2 the U.S. sales to encourage things like
3 providing the brand name, doing marketing war
4 games, etc., etc., contributions to the U.S.
5 that benefitted both parties.

6 Q. So are you saying Novartis would not
7 have made contributions to the partnership, if
8 there were no U.S. royalty payments from
9 Incyte?

10 MS. SIMSON: Objection to form.

11 Mischaracterizes her testimony.

12 A. I did not say that. I said it
13 incentivized. I understand that it was a
14 really good collaboration and both sides felt
15 both sides were working well together and that
16 Novartis worked very hard and contributed many
17 things to Incyte that benefitted Incyte, and
18 Novartis benefitted by marketing the product
19 successfully in Europe, using its commercial
20 capabilities to make the product more
21 successful than either side had forecast.

22 Q. And what contributions has Novartis
23 made after the ten-year anniversary of the
24 first commercial sale?

25 MS. SIMSON: Objection to the form,

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2 and to the extent you're asking for a legal
3 conclusion or a legal opinion.

4 A. I -- I -- I don't know exactly the
5 timings of many of the things that were listed
6 as contributions by Novartis. If you go to
7 the -- the email chain that -- I'm forgetting
8 all the right names. One name in it is Jim
9 Dailey, where they discuss the commercial
10 contributions, and they go on to say -- Incyte
11 goes on to say.

12 Q. But that was in 2011, wasn't it?

13 MS. SIMSON: Objection to form.

14 A. I don't know.

15 Q. It --

16 MS. SIMSON: Dr. Pullan, were you
17 done with your response?

18 Q. It wasn't after the ten-year
19 anniversary of the first commercial sales of
20 Jakafi in the United States; is that right?

21 MS. SIMSON: Objection to form.

22 Argumentative. Also interrupted her last
23 response.

24 A. E-mail -- I'm sorry.

25 Q. So my question was, are you aware of

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2 any specific contributions that Novartis has
3 made after the ten-year anniversary of the
4 first commercial sale of Jakafi in the United
5 States?

6 MS. SIMSON: Objection to form.

7 Objection to the extent you're asking for a
8 legal opinion or legal conclusion.

9 A. The email states categories of
10 contributions. I have no doubt that some of
11 those categories of contributions continue to
12 this day. I don't have the specifics of what
13 happened when, but as I understand it, the
14 parties worked well together and there were
15 certainly no complaints about a lack of
16 contribution or a falloff in contribution. It
17 was a good collaboration and continued.

18 MR. STOPS: Great. Let's take a
19 five-minute break.

20 THE WITNESS: Okay.

21 MS. SIMSON: Sure.

22 THE VIDEOGRAPHER: We are going off
23 the record. The time is 6:11 p.m.

24 (Recess.)

25 THE VIDEOGRAPHER: We are back on

1 L. Pullan, Ph.D. - Highly Confidential
2 the record. The time is 6:27 p.m.

3 BY MR. STOPS:

4 Q. Dr. Pullan, Incyte -- during the
5 negotiation process, Incyte was looking for a
6 partner who could commercialize ruxolitinib
7 outside the United States, correct?

8 MS. SIMSON: Objection to form.
9 Calls for speculation.

10 A. I believe that Incyte wanted a
11 partner that could commercialize outside the
12 U.S.

13 Q. Incyte always intended to
14 commercialize ruxolitinib inside the United
15 States itself; is that correct?

16 MS. SIMSON: Objection to form.
17 Calls for speculation.

18 A. I don't know what Incyte always
19 intended. Incyte expressed that it wanted to
20 commercialize in the U.S. during the
21 negotiations. What it always wanted, I don't
22 know.

23 Q. The initial payment from Novartis to
24 Incyte, the license payment was negotiated by
25 the parties, correct?

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2 A. Correct.

3 Q. And that license payment was for the
4 JAK program and the cMET program, correct?

5 MS. SIMSON: Objection to form.

6 A. It included both, but it was largely
7 driven by the JAK program.

8 Q. The milestone payments were also
9 negotiated by the parties, correct?

10 MS. SIMSON: Objection to form.

11 A. Yes, the milestones were negotiated
12 by the parties.

13 Q. And the royalty payments were also
14 negotiated by the parties, correct?

15 A. The royalty payments were negotiated
16 by the parties.

17 Q. Did either party have greater
18 bargaining power during the negotiation
19 process?

20 MS. SIMSON: Objection to form.

21 Calls for speculation. Also object to the
22 extent asking for a legal opinion or legal
23 conclusion.

24 A. I don't know. Whether one side held
25 a greater power than another power in a

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2 negotiation is alternatives. Both sides had
3 alternatives. Power in negotiation is
4 financial. Novartis had more financial.
5 Incyte was in debt, and had viability concerns,
6 which it managed to solve before signing the
7 full agreement, at least delay.

8 One might argue, in a speculative
9 way, that perhaps Novartis had more power, but
10 the terms that Novartis paid were very
11 generous, were the largest upfront of any deal
12 I could identify in 2009. So both sides did --
13 ultimately did very well.

14 Q. Okay. Which revenue stream was more
15 important to Novartis, the revenue from sales
16 of what became Jakavi or the royalty payments
17 from Incyte?

18 MS. SIMSON: Objection to form. And
19 calls for speculation as to what was
20 important to Novartis.

21 A. I think it's clear from the record
22 that Novartis considered what is termed the
23 reverse royalty, the payment on U.S. sales as
24 important. They fought for it. They, in the
25 Pharm Committee, ruled that it was a required

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2 term.

3 If you're asking which was more
4 likely to happen, one might argue that the
5 royalty on U.S. sales was more likely to happen
6 because the -- Incyte had had discussions with
7 the FDA, and Europe is a more fragmented
8 market. So there are ways to think about it
9 which would argue the reverse royalty was a
10 sure thing, reverse royalty would not require
11 Novartis to expend resources like sales and
12 marketing. So it was important to Novartis.
13 The ability to sell the product in Europe upon
14 success was also important to Novartis.

15 Q. You said it was a -- sorry. The
16 royalty from Incyte was a "sure thing."

17 As we've discussed today --

18 A. More sure thing.

19 Q. Well, as we discussed today, that's
20 absolutely not true because it was contingent
21 upon Novartis attaining the reimbursement
22 pricing approval in three-out-of-five major EU
23 countries, correct?

24 MS. SIMSON: Objection to form.

25 A. Negotiated subsequently an

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2 amendment, but neither side had a sure thing.

3 If you remember the documents, the probability
4 of success was about 70 percent in the judgment
5 of the parties, and so that means there was a
6 30 percent chance it would not get approved, in
7 both -- both or either country.

8 Q. So my question was just: Which of
9 the revenue streams was more important to
10 Novartis?

11 A. I've answered that.

12 MS. SIMSON: Objection to form.

13 Asked and answered.

14 BY MR. STOPS:

15 Q. I think you said they were both
16 important?

17 A. I said they were both important.

18 Q. You don't have an opinion on which
19 one was more important to Novartis?

20 MS. SIMSON: Objection to form.

21 (Multiple speakers.)

22 MS. SIMSON: Objection to form.

23 Calls for speculation.

24 A. I do not have complete insight into
25 Novartis's thinking. I'm judging from the

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2 record, and the record shows they certainly
3 worked hard to get that reverse royalty. They
4 considered it important. Understandably, they
5 also wanted to sell the product. So.

6 Q. So you're not offering a -- value
7 judgment opinion on which was more important?

8 MS. SIMSON: Objection to form.

9 A. That is correct. I've answered that
10 both were important.

11 Q. And you referenced this, but prior
12 to the execution of the 2009 agreement between
13 Incyte and Novartis, Incyte had finished a
14 large fund raise, correct?

15 MS. SIMSON: Objection to form.

16 A. Yes.

17 Q. And Incyte was also in the process
18 of finalizing a deal with Eli Lilly we also
19 discussed, right?

20 MS. SIMSON: Objection to form.

21 A. Which also was uncertain.

22 Q. Now, we also talked about this a
23 little bit.

24 When Novartis started negotiating
25 with Incyte, it had its own JAK inhibitor

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2 program, correct?

3 MS. SIMSON: Objection to form.

4 Calls for speculation.

5 A. I believe the JAK program at
6 Novartis existed when it started negotiating
7 with Incyte.

8 Q. Do you know if that program still
9 exists?

10 MS. SIMSON: Objection to form.

11 Calls for speculation.

12 A. I do not know.

13 Q. You're not aware of any products
14 that have come out of that program?

15 A. I haven't looked.

16 Q. They would have been under the
17 agreement with Incyte, correct?

18 MS. SIMSON: Objection to form.

19 Calls for speculation.

20 A. As I remember, it could bring into
21 and the parties could discuss the inclusion of
22 said products.

23 Q. Do you know why Novartis pursued
24 Incyte's JAK program when it had its own JAK
25 program?

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2 MS. SIMSON: Objection to form.

3 Calls for speculation.

4 A. I can speculate that it's because
5 the rux program from Incyte was more advanced
6 and had attractive data.

7 Q. And this goes without saying, but
8 Incyte invented the ruxolitinib molecule,
9 correct?

10 MS. SIMSON: Objection to form.

11 A. I honestly am not absolutely sure I
12 know that for a fact, but I presume that to be
13 a fact. They owned the patent. You know, I
14 didn't think about who was the inventors on the
15 patent.

16 Q. And Incyte came up with the
17 formulation for ruxolitinib, correct?

18 MS. SIMSON: Objection to form.

19 Call for speculation.

20 A. I don't know.

21 Q. We know Novartis didn't invent
22 ruxolitinib, correct?

23 MS. SIMSON: Objection to form.

24 Calls for speculation.

25 A. We know Novartis did not invent rux.

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2 Q. And ruxolitinib is indicated for the
3 treatment of four conditions, correct?

4 MS. SIMSON: Objection to form.

5 A. I can only think of three off the
6 top of my head, but polycythemia vera,
7 myeloproliferative disorders, and
8 graft-versus-host disease. What's the fourth?

9 Q. Graft versus host is split into
10 acute and chronic.

11 A. Oh, okay.

12 Q. And to your knowledge, Novartis did
13 not develop any of the methods of using
14 ruxolitinib, correct?

15 MS. SIMSON: Objection to form.

16 A. I object to that.

17 (Multiple speakers.)

18 A. Sorry.

19 Q. Please.

20 A. I object to that. If you're saying
21 they did not develop the method of use, they
22 ran, helped design, ran clinical trials which
23 developed the method of use.

24 If you're asking did they file a
25 method-of-use patent, that's a different

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2 question. But they did indeed help or
3 substantially help develop the method of use of
4 the drug that ends up in the label that is the
5 path to approval and use.

6 Q. And they -- sorry. Go ahead.

7 A. And Incyte refers to the clinical
8 trial contributions of Novartis as important in
9 the FDA approval in their press releases.

10 Suggesting that, indeed, Incyte contributed to
11 the establishment of the way the products are
12 used and the labels and the approval in the
13 U.S. as well as in Europe and elsewhere.

14 Q. Novartis didn't come up with any of
15 the methods of using ruxolitinib, right?

16 MS. SIMSON: Objection to form.

17 A. Come up with. I just finished
18 telling you they contributed to, they helped
19 study design. I don't know whose contribution
20 to study design was larger. I don't have that
21 much insight.

22 Q. Incyte had the MF and polycythemia
23 polycythemia vera uses already planned when the
24 deal was signed, right?

25 MS. SIMSON: Objection to form.

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2 A. They had the intention to achieve
3 those uses.

4 Q. Okay. And Incyte approached
5 Novartis and asked them to buy into the
6 graft-versus-host disease indications, correct?

7 MS. SIMSON: Objection to form.

8 Calls for speculation.

9 A. I believe Incyte approached Novartis
10 first.

11 Q. And so the -- the graft versus host
12 indications were developed -- or were
13 originated by Incyte after the parties entered
14 the 2009 agreement, correct?

15 MS. SIMSON: Objection to form.

16 A. I'm not sure I really know when they
17 started working on graft versus host.

18 Q. Did Novartis originate any of the
19 methods of using ruxolitinib?

20 MS. SIMSON: Objection to form.

21 Calls for speculation.

22 A. Just as before, the parties
23 collaborated to develop the way the products
24 are used and what appears in the labels.

25 And the label is what we sell,

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2 right? The value of the solid material in a
3 vial is a small proportion of the value of the
4 drug. The method of use, the practice of use
5 by physicians, by KOLs, is based on the
6 clinical trial results, and the negotiated
7 label with the regulatory authorities.

8 Q. There wouldn't be any Jakafi or
9 Jakavi without Incyte, right?

10 MS. SIMSON: Objection to form.

11 A. I love it, but there wouldn't be any
12 without Novartis as well, because those words
13 were brand names owned by Novartis. So what we
14 know as Jakavi and Jakafi are Novartis
15 originated brand names -- brand names.

16 Q. Ruxolitinib would not exist without
17 Incyte, right, the marketed product?

18 MS. SIMSON: Objection to form.

19 A. I think rux would not exist without
20 Incyte. It might not exist without Novartis as
21 well, as a marketed product, which is the
22 question you asked me.

23 Q. Incyte had submitted the IND for
24 ruxolitinib prior to the 2009 agreement with
25 Novartis, correct?

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2 A. Correct.

3 MS. SIMSON: Objection to form.

4 BY MR. STOPS:

5 Q. Novartis did not submit the IND for
6 ruxolitinib, correct?

7 A. That is correct.

8 Q. Incyte ran the Phase 1 clinical
9 studies for ruxolitinib correct?

10 A. Yes.

11 Q. Novartis did not run the Phase 1
12 clinical studies for ruxolitinib, correct?

13 A. Novartis ran more expensive larger
14 studies, but did not run the Phase 1.

15 Q. Incyte ran the Phase 2 clinical
16 studies for ruxolitinib, correct?

17 MS. SIMSON: Objection to form.

18 A. I am not sure whether Incyte ran all
19 the Phase 2s. I do not know the history of the
20 drug. Often there are Phase 2s following on
21 and could well have been run during the
22 collaboration.

23 Q. Incyte obtained all the patents that
24 claim ruxolitinib in the United States,
25 correct?

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2 MS. SIMSON: Objection to form.

3 A. As far as my knowledge goes, that is
4 correct.

5 Q. So Incyte obtained all the patents
6 that claim ruxolitinib in the entire world,
7 correct?

8 MS. SIMSON: Objection to form.

9 A. As we discussed before, by the time
10 you start a Phase 3 program, and as is
11 discussed in the reports, most of the patents
12 will have been filed to protect the molecule.
13 And Incyte came to this collaboration at a
14 Phase 3 start period.

15 Q. Do you know what percentage of
16 branded drugs without generic competition that
17 are protected only by patents that were
18 obtained after the drug was approved?

19 MS. SIMSON: Objection to form.

20 Calls for speculation.

21 A. No, I do not know the percentage.
22 Pretty small, I think, but speculation.

23 Q. In your opening report, you cite to
24 a median clinical cost of almost 1 billion
25 per -- per drug.

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2 Do you recall that?

3 MS. SIMSON: Mr. Stops, can you
4 direct us --

5 MR. STOPS: Sure. Page 4. I think
6 you said it a few times. Page 4. Sorry.
7 First full paragraph.

8 A. Yes.

9 Q. And do you know how much Novartis
10 spent up to a ruxolitinib approval?

11 A. No, I do not.

12 MS. SIMSON: Objection to form.

13 A. And this is clinical costs, when one
14 counts the cost failure and the cost of
15 capital.

16 Q. Right. So this includes all of the
17 other drugs that Incyte attempted to develop
18 and did not bring to market.

19 It's not just ruxolitinib, correct?

20 MS. SIMSON: Objection to form.

21 A. Yeah.

22 Q. It's the -- it's the expensive costs
23 of research and development programs in the
24 pharmaceutical industry, generally?

25 A. Yes, this is a general number.

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2 Q. Do you know how much it cost Incyte
3 to bring ruxolitinib to market?

4 MS. SIMSON: Objection to form.

5 A. I do not. And does the agreement
6 care? No, it doesn't. The agreement is what
7 the agreement says, meaning what it cost Incyte
8 before the agreement is what it cost Incyte
9 before the agreement. That has no bearing on
10 what the agreement says about going forward.

11 Q. Wouldn't the cost be relevant, at
12 the very least, to Incyte's perspective coming
13 to the agreement?

14 MS. SIMSON: Objection to form.

15 Calls for speculation.

16 A. Incyte's perspective coming to the
17 agreement is important. But the costs, per se,
18 have nothing to do with what the terms of the
19 agreement say, or the justification for paying
20 or not paying a term.

21 Q. Neither did the costs going forward
22 after the agreement, right?

23 MS. SIMSON: Objection to form.

24 A. I do not believe, in this particular
25 agreement, there is any cap on costs or on

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2 payment of royalties or costs, whereas there
3 are in some of the Incyte agreements. So in
4 this particular agreement, I do not believe it
5 is relevant what the costs are.

6 Q. Going forward?

7 A. Going forward or before.

8 Q. You still have Page 4 --

9 A. Yes, sir.

10 Q. -- in front of you?

11 The very last sentence of that
12 paragraph that we were in just references
13 studying additional disease settings or
14 indications. And that's a -- studying
15 additional disease settings or indications is a
16 way that parties can obtain additional patent
17 protections on a product, correct?

18 MS. SIMSON: Objection to form.

19 A. Conceivably, but what it's driving
20 at -- studying additional settings and
21 indications is driving at obtaining the label
22 and the medical use of the product. The
23 purpose of additional studies is not to obtain
24 patents. The purpose of additional studies is
25 to obtain use of the product.

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2 Q. Now, you're -- in your opening
3 report your opinions started on -- the section
4 entitled: Opinions start on Page 7 of your
5 report.

6 A. Okay.

7 Q. Is that correct?

8 Now, you don't provide any citations
9 to anything in the record on Page 7, correct?

10 MS. SIMSON: Objection to form.

11 A. There are no footnotes.

12 Q. Throughout your report -- make sure
13 I'm accurate on this -- I believe there is a
14 single footnote, footnote 7 on Page 9 in the
15 portion of your report starting with the words
16 that, the word "opinions."

17 Is that correct?

18 A. It looks to me like there's also a
19 footnote 8, if you're just talking footnotes.

20 Q. Well, I guess my question is pretty
21 simple.

22 Why did you not footnote the
23 reference material that you cited in your
24 report?

25 MS. SIMSON: Objection to form.

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2 A. The material I cited in the report
3 is based on, eh, almost 40 years of experience
4 and hundreds of negotiations and reading
5 hundreds more contracts. It is not based on
6 any one document that I would cite.

7 Q. In early stage deals that you --
8 that you've been involved in, what is the
9 ballpark of -- I think you started -- let's
10 take a step back.

11 For this agreement for ruxolitinib,
12 I think you said the parties had estimated the
13 probability of success was around 70 percent,
14 right?

15 MS. SIMSON: Objection to form.

16 A. At one point that was the estimates
17 of the parties, yes.

18 Q. Is that -- is that in keeping with
19 your experience for products at the -- that are
20 in Phase 3?

21 MS. SIMSON: Objection to form.

22 A. I don't remember the absolute number
23 that is the industry average across all
24 therapeutic areas, but it is reasonably close
25 to the general number, if it is not the general

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2 number.

3 Q. Products that are earlier stage and
4 even if we've been to true R&D products would
5 have much lower --

6 A. R products, you mean.

7 Q. Say it again?

8 A. R. You said R&D. This is an R&D
9 product.

10 Q. Oh, I see, research product. Yeah,
11 so things are very, very early stage would have
12 lower probability of success?

13 A. Correct.

14 Q. So when you attempt to calculate
15 values for early stage products, do the values
16 wind up being the -- calculated, like the
17 eNPVs, are they negative? Lower case E, N-P-V.

18 MS. SIMSON: Objection to form.

19 A. The expected net present value for
20 many early stage products are indeed negative.

21 Q. Why would parties do a deal with a
22 negative eNPV?

23 MS. SIMSON: Objection to form.

24 Calls for speculation.

25 A. So parties do a deal when they

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2 believe together they can make the drug more
3 successful than the eNPV might suggest.

4 Q. Can you explain that?

5 A. So all modelling is expected -- why
6 do you bet on the lottery? Why does anybody
7 bet on the lottery?

8 Q. I don't know?

9 A. I don't know either. But people bet
10 on the lottery because they hope and believe
11 that they have a chance of success. It might
12 not be a probability of success, and the eNPV
13 is the most probable estimate. It is not the
14 only estimate, right?

15 Q. Yeah. But if you were -- by sheer
16 math, wouldn't you necessarily recommend
17 against doing any deal with a negative eNPV?

18 MS. SIMSON: Objection to form. And
19 also to the extent that that question
20 exposes confidentiality or privilege
21 concerns, I'd urge you not to disclose that
22 if that would be an issue.

23 A. I will not answer it in a way that
24 conflicts with -- it is the case -- actually,
25 many companies who are hugely successful run

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2 into great difficulties because they argue
3 themselves out of doing deals. Roche, after
4 Valium. Valium was astronomically successful
5 for its time. Roche, after Valium, did very
6 few deals and virtually no early deals and all
7 of the sudden they look around and they have no
8 pipeline, they have no prospects. Roche's size
9 shrunk historically.

10 One must do deals. One must build a
11 pipeline if you're going to have a future. You
12 try to pick the best opportunities, but you
13 pick opportunities.

14 Q. Okay. So eNPV is not the whole
15 story?

16 MS. SIMSON: Objection to form.

17 A. No, there are many factors that go
18 into doing a deal. And the uncertainty, the
19 ability to predict an eNPV increases with time.
20 That is, you know more, right? The comfort of
21 an estimate at a preclinical research stage is
22 very, very low. The error bars on those
23 numbers are huge. The error bars at Phase 3
24 are still pretty doggone significant and people
25 are wrong most of the time, but they're

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dramatically wrong.

It is very, very difficult to predict what a product would do and it is more difficult for an earlier opportunity.

The value of eNPVs in even thinking about a deal is much lower for an early opportunity. Indeed Merck uses a real options technique for evaluating early opportunities.

Q. What's the real options technique? You knew I was going to ask that.

A. Yeah, I did, and I should have thought up my clear explanation. I think it's a not very helpful technology, but Merck does use this for early opportunities.

It says that the volatility in the stock price is a measure of the predictability and optionality of -- of an arrangement.

Q. I'm sorry I asked.

A. And the Black-Scholes calculation, and it's pretty obscure, and it's extremely difficult to stand in front of somebody and then say, The reason I say it's worth X is because of these alpha factors and beta factors and the volatility of the stock and the index

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2 compared to the whole. It becomes so
3 untransparent that, in my opinion, it's not a
4 very useful technique in communicating value.
5 But it is used as an alternative to what they
6 perceive as the insufficiencies of the eNPV for
7 early opportunities.

8 MR. STOPS: I think I'm done. Let's
9 go off the record for one minute and we can
10 stay here. I'll step out.

11 THE VIDEOGRAPHER: We are going off
12 the record. The time is 6:57 p.m.

13 (Recess.)

14 THE VIDEOGRAPHER: We are back on
15 the record. The time is 7:01 p.m.

16 MR. STOPS: Doctor, you'll be happy
17 to hear that I have no further questions
18 for you at this time.

19 THE WITNESS: Very happy.

20 MS. SIMSON: Why don't we go off the
21 record. I'll check my notes and see if I
22 have anything.

23 THE VIDEOGRAPHER: We are going off
24 the record. The time is 7:01 p.m.

25 (Recess.)

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2 THE VIDEOGRAPHER: We are back on
3 the record. The time is 7:39 p.m.

4 EXAMINATION BY

5 MS. SIMSON:

6 Q. Welcome back, Dr. Pullan. Just a
7 few follow-up questions for you. Dr. Pullan,
8 do you recall testifying earlier about your
9 many years of experience in negotiating
10 pharmaceutical BD&L deals and bringing that
11 experience to bear in considering the 2009 deal
12 between Novartis and Incyte?

13 A. Yes, I do.

14 MR. STOPS: Objection, leading.

15 BY MS. SIMSON:

16 Q. And when you were discussing the
17 relevance of the years of experience to
18 considering the 2009 agreement, were you
19 referring to the industry custom and practice
20 perspective as opposed to a legal perspective?

21 A. Absolutely.

22 Q. Do you recall being asked about
23 whether, generally speaking, parties can ever
24 fail to accurately capture their intent in the
25 words of their agreement?

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2 A. Yes, I do.

3 Q. And that was earlier today by

4 Mr. Stops, correct?

5 A. Yes.

6 Q. And you said --

7 MR. STOPS: Just like you did

8 before, your counsel, you got to give me a

9 second to object before you answer the

10 question.

11 Go ahead.

12 BY MS. SIMSON:

13 Q. I think Mr. Stops spoke there before

14 I was done with my last question, so I'll

15 withdraw that and start again. Okay.

16 And you said that this may be

17 possible.

18 MR. STOPS: Objection. Leading.

19 BY MS. SIMSON:

20 Q. Do you recall testifying to that,

21 Dr. Pullan?

22 A. I -- I recall testifying to that. I

23 believe those were my words.

24 Q. But it is your opinion that it's --

25 in this case the 2009 agreement did capture the

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2 intention of the parties?

3 MR. STOPS: Objection, leading.

4 MS. SIMSON: I'm not done. Please
5 let me finish before you make your
6 objection, Mr. Stops.

7 BY MS. SIMSON:

8 Q. But it's your opinion in this case
9 that the 2009 agreement did capture the
10 intention of the parties with respect to the
11 duration of the reverse royalty.

12 MR. STOPS: Objection, leading.

13 A. Yes, that is my opinion.

14 Q. At the end of today's deposition,
15 and I'm reading from the transcript here, so
16 you testified that: Incyte refers to the
17 clinical trial contributions of Novartis as
18 important in the FDA approval in their press
19 releases suggesting that indeed, Incyte
20 contributed to the establishment of the way the
21 products are used and the labels and the
22 approval in the U.S., as well as in Europe and
23 elsewhere.

24 Do you remember giving that
25 testimony?

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2 A. I don't remember it exactly that
3 way, but I have no doubt that I misspoke and
4 that should have been Novartis's contribution
5 to the clinical trials as mentioned in the
6 Incyte press release.

7 Q. Okay. And that was my question, was
8 whether or not you misspoke and you meant
9 Novartis in lieu of Incyte?

10 MR. STOPS: Objection, vague?

11 A. Correct and answered. Yes.

12 Q. So --

13 A. I did indeed intend to highlight the
14 contributions of Novartis. And so I did -- if
15 the record is correct and I have no doubt it is
16 not -- I do not doubt it is correct. Therefore
17 I misspoke.

18 Q. Dr. Pullan, we've spoken about the
19 2009 agreement at length during today's
20 deposition.

21 Did you read that agreement
22 thoroughly in connection with providing your
23 opinions in this case?

24 A. Yes, many times.

25 Q. And Dr. Pullan, you were asked by

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2 Mr. Stops about the citations in your opening
3 report.

4 Do you remember those questions?

5 A. Yes, I do.

6 Q. And next to your report, as
7 Exhibit A, is your materials considered list,
8 if you want to take a look at that.

9 A. In both reports, yes.

10 Q. And documents discussed in your
11 reports are listed on those exhibits, right?

12 A. Correct.

13 Q. And there might be several other
14 citations throughout your reports that are not
15 footnotes.

16 MR. STOPS: Objection to form,
17 leading.

18 A. It is correct that the materials
19 listed as documents considered were indeed
20 considered, read, and may not appear in
21 footnotes but should not be assumed to be not
22 considered.

23 MS. SIMSON: I have no further
24 questions, unless of course Mr. Stops has
25 follow-up, and I may have follow-up.

L. Pullan, Ph.D. - Highly Confidential

MR. STOPS: One second. We don't
have to go off, I don't think.

Okay. No questions.

THE WITNESS: Thank you.

MS. SIMSON: Nothing further here.

So, Dr. Pullan, thank you very much.

MR. MACH: Thanks, everyone.

THE VIDEOGRAPHER: We are going off
the record the time is 7:44 p.m.

(Time Noted: 7:44 p.m.)

LINDA PULLAN, PHD

Subscribed and sworn to before me

this day of 2022.

L. Pullan, Ph.D. - Highly Confidential

C E R T I F I C A T E

STATE OF NEW YORK)

) ss.:

COUNTY OF KINGS)

I, ANITA M. TROMBETTA, a Notary
Public within and for the State of New
York, do hereby certify:

That LINDA PULLAN, PHD, the witness
whose deposition is hereinbefore set forth,
was duly sworn by me and that such
deposition is a true record of the
testimony given by such witness to the best
of my ability.

I further certify that I am not
related to any of the parties to this
action by blood or marriage; and that I am
in no way interested in the outcome of this
matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 6th day of June, 2022.



ANITA M. TROMBETTA, RMR, CRR

1 L. Pullan, Ph.D. - Highly Confidential

2 -----I N D E X-----

3	WITNESS	EXAMINATION BY	PAGE
4	Linda Pullan, Ph.D.	MR. STOPS	5
5		MS. SIMSON	313

6 -----EXHIBITS-----

7	EXHIBIT NAME	DESCRIPTION	PAGE
8	Exhibit 1001	Collaboration and	7
9		License Agreement	
10		Dated November 24,	
11	Exhibit 1002	Pullan Opening	28
12	Exhibit 1003	Expert Report	28
13	Exhibit 1004	Pullan Rebuttal	96
14	Exhibit 1005	Report	
15		July 9, 2009, Term	
16		Sheet	
17	Exhibit 1006	First Draft	117
18		Agreement dated July	
19		27, 2009	
20	Exhibit 1007	Incyte-Innovent	142
21		Agreement	
22	Exhibit 1008	2019 Agreement	260
23		between Incyte and	
24		Novartis	
25		Agreement Between	272
		Incyte and Eli Lilly	

1 NAME OF CASE:

2 DATE OF DEPOSITION:

3 NAME OF WITNESS:

4 Reason Codes:

5 1. To clarify the record.

6 2. To conform to the facts.

7 3. To correct transcription errors.

8 Page _____ Line _____ Reason _____

9 From _____ to _____

10 Page _____ Line _____ Reason _____

11 From _____ to _____

12 Page _____ Line _____ Reason _____

13 From _____ to _____

14 Page _____ Line _____ Reason _____

15 From _____ to _____

16 Page _____ Line _____ Reason _____

17 From _____ to _____

18 Page _____ Line _____ Reason _____

19 From _____ to _____

20 Page _____ Line _____ Reason _____

21 From _____ to _____

22 Page _____ Line _____ Reason _____

23 From _____ to _____

24

25 _____

1 L. Pullan, Ph.D. - Highly Confidential

2 MR. STOPS: One second. We don't
3 have to go off, I don't think.

4 Okay. No questions.

5 THE WITNESS: Thank you.

6 MS. SIMSON: Nothing further here.

7 So, Dr. Pullan, thank you very much.

8 MR. MACH: Thanks, everyone.

9 THE VIDEOGRAPHER: We are going off
10 the record the time is 7:44 p.m.

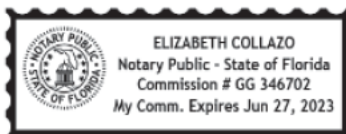
11 (Time Noted: 7:44 p.m.)

12
13 *Linda Pullan*

14 -----
15 LINDA PULLAN, PHD

16
17 Subscribed and sworn to before me
18 this 5th day of July 2022.

19 *Elizabeth Collazo*



1 NAME OF CASE: *Novartis Pharma AG v. Incyte Corp.*, No. 1:20-cv-00400-GHW-GWG

2 DATE OF DEPOSITION: June 3, 2022

3 NAME OF WITNESS: Linda Pullan, Ph.D.

4 Reason Codes: *** Please see attached errata sheet ***

5 1. To clarify the record.

6 2. To conform to the facts.

7 3. To correct transcription errors.

8 Page _____ Line _____ Reason _____

9 From _____ to _____

10 Page _____ Line _____ Reason _____

11 From _____ to _____

12 Page _____ Line _____ Reason _____

13 From _____ to _____

14 Page _____ Line _____ Reason _____

15 From _____ to _____

16 Page _____ Line _____ Reason _____

17 From _____ to _____

18 Page _____ Line _____ Reason _____

19 From _____ to _____

20 Page _____ Line _____ Reason _____

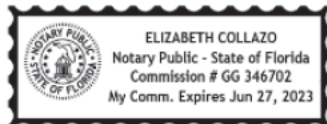
21 From _____ to _____

22 Page _____ Line _____ Reason _____

23 From _____ to _____

24 Subscribed and sworn to before me this 5th Day of July, 2022

25 *Elizabeth Collazo*



Linda Pullan

Linda Pullan, Ph.D. Deposition Transcript Errata

Deposition taken on June 3, 2022, in *Novartis Pharma AG v. Incyte Corporation*, Case No. 1:20-cv-00400-GHW-GWG, pending in the U.S. District Court for the Southern District of New York

<u>Page and Line</u>	<u>Change</u>	<u>Reason for Change</u>
8:22	Change “pharmaceuticals” to “Pharmaceuticals”	Transcription error
10:19	Add “when assessing” after “phase 2”	Clarification
10:20	Add “if there is” after “and”	Clarification
12:8	Add apostrophe to “stockholders”	Transcription error
13:23	Change “of the” to “other”	Transcription error
14:5	Add “for” after “was”	Transcription error
15:12	Change “functioning” to “function in”	Transcription error
15:16	Delete “an”	Transcription error
17:6	Delete first “a”	Transcription error
17:16	Change “have” to “had”	Transcription error
18:10	Change “r��sum��” to “r��sum��”	Transcription error
19:5	Add “business development at” after “of”	Clarification
19:25	Change “Yes, it was in 2022” to “It was in December 2021”	Correction
22:14	Change “difficulty with any of the other” to “other correction with either of my”	Clarification
23:13	Change “paperwork” to “paper”	Transcription error
24:5	Change “history, experience” to “history and experience”	Transcription error
24:23	Change “the” to “my”	Transcription error
25:4	Change “party” to “parties”	Transcription error
25:18	Add “portion” after “cMET”	Transcription error
27:15	Add “the meaning of terms” after “interpret”	Clarification
27:18	Change “license and the expectations that” to “licensing deal and what the expectations”	Clarification
27:22	Change second “and” to “who is”	Clarification
27:23	Change “make” to “makes”	Clarification
31:3	Add “and thus the entire agreement” after “structure”	Clarification
31:4	Change “things” to “agreements”	Clarification
32:16	Change “have” to “has”	Transcription error
32:17	Change “are” to “is”	Transcription error
33:13	Change “of” to “with”	Transcription error

<u>Page and Line</u>	<u>Change</u>	<u>Reason for Change</u>
35:11	Change “meanings” to “meaning”	Transcription error
35:21	Change “they” to “pharmaceutical collaboration and licensing agreements”	Clarification
38:2	Change the second “they” to “the differences”	Clarification
39:13	Delete “a” after “find”	Transcription error
40:21	Change “dissect, torture” to “dissect and torture”	Transcription error
41:5	Delete “the” after “create”	Transcription error
43:23	Add “the” after “in”	Transcription error
44:19-20	Change “years, you know, you can have years and you do - - people do - - take” to “years do not necessarily reflect the scope of knowledge and experience. Tech”	Clarification
44:23	Delete “of” after the second “as”	Transcription error
45:23	Delete “not”	Transcription error
46:25	Change the first “drives” to “is”	Transcription error
47:19-20	Change “a preclinical” to “at the preclinical stage”	Clarification
48:6	Delete “of - - you’ve got”	Clarification
48:25	Change “proved” to “approved”	Transcription error
49:12	Change “interrelationship” to “enter a relationship”	Transcription error
49:15	Delete “Yes.”	Clarification
50:8	Add “a” after “is”	Transcription error
50:9	Change “agreement. The” to “agreement the”	Transcription error
53:6	Change “C-MET, licensed products” to “C-MET Licensed Products”	Transcription error
56:8	Change “in dispute” to “of the forecasted reverse royalty payment amounts at the time somehow”	Clarification
56:9	Add “is” after “dispute” and before the first “not”	Clarification
56:18	Change “they” to “the projected values”	Clarification
56:18	Change “projected,” to “projected or”	Transcription error
56:19	Add “than projected” after “smaller”	Clarification
57:19	Change “of” to “figures are”	Clarification
57:23	Add “capping the reverse royalty” after “term”	Clarification
58:7	Change “are” to “is”	Transcription error
58:23	Delete “that’s - -”	Clarification
66:19	Change “scheduling” to “schedule and”	Transcription error

<u>Page and Line</u>	<u>Change</u>	<u>Reason for Change</u>
70:20	Change “valuable, much more protection than is a - - a” to “valuable and offers much more protection than a patent for a”	Transcription error / clarification
71:16	Change “matters” to “matter”	Transcription error
74:3	Add “across the industry and in this case” after “facts”	Clarification
74:3	Add “it” after “rebut”	Transcription error
75:3	Change “which” to “what”	Transcription error
75:11	Add “like with Incyte” after “exceptions”	Clarification
76:13-14	Change “a single source of manufacturing a single - - a highly difficult - -” to “a single, highly difficult source of manufacturing.”	Clarification
83:17	Change “unobvious” to “nonobvious”	Transcription error
87:19	Delete “But”	Clarification
90:5	Change “in most” to “and its”	Clarification
90:14	Change “Pharmaceutical” to “The pharmaceutical”	Transcription error
95:3	Change “Patent - - royalties” to “Royalties”	Clarification
95:7	Change “contribution” to “contributions”	Transcription error
96:3	Change “They” to “Royalties”	Clarification
98:9	Change “covering” to “cover email”	Transcription error
105:7	Change “Novartis” to “it”	Clarification
105:15	Change “licensed” to “the Licensed”	Transcription error
106:3	Change “licenses” to “licensed”	Transcription error
106:24	Add “within” after “be” and add “of the term sheet” after “frame”	Clarification
107:23	Change “positions” to “definitions”	Clarification
109:7	Add “first part of this” after “The”	Clarification
109:21	Change “Incyte, Novartis” to “or Incyte development”	Clarification
111:21	Change the first “in here” to “in the final agreement”	Clarification
111:21	Change the second “in here” to “in the final term sheet”	Clarification
111:21	Change “right?” to “but none of those additions are material financial deal terms.”	Clarification
112:25	Delete “because of - - doing things”	Clarification
113:22	Change “benefit, but” to “benefit. But”	Transcription error
113:23	Delete the comma	Transcription error
115:9	Change “agreement that does indeed - - the” to “agreement. That”	Clarification

<u>Page and Line</u>	<u>Change</u>	<u>Reason for Change</u>
122:2-3	Change “as the phrases are in the Novartis” to “just as these same phrases are in the Novartis defined terms Novartis Know-How and Novartis Patent Rights”	Clarification
123:13-14	Delete “the concept of the - - the point of these - -”	Clarification
125:20	Change “reflect” to “reflects”	Transcription error
138:5	Delete “that - -”	Clarification
148:22	Change “parties” to “party”	Transcription error
149:14	Change “didn’t” to “did”	Transcription error
161:19	Change “they” to “Incyte”	Clarification
162:17	Change “agreement” to “approval”	Transcription error
169:6	Change “there” to “they”	Transcription error
169:22	Change both uses of “there” to “they”	Transcription error
173:11	Change “little ii” to “8.3(b)(ii)”	Clarification
175:8	Change “little ii” to “8.3(b)(ii)”	Clarification
178:12	Add “a” after “is”	Transcription error
185:12	Change “are” to “is”	Transcription error
186:5	Change “for” to “from”	Transcription error
188:12	Change “extent [sic]” to “royalty duration”	Transcription error
189:19	Change “to claim to expire” to “claim expiration”	Clarification
191:3	Delete “in patent - -”	Clarification
195:7	Change “the patent” to “the royalty”	Clarification
195:9	Change “exclusivity” to “protection”	Clarification
196:16	Change “it” to “Incyte”	Clarification
196:25	Add “term” after “defined”	Transcription error
199:3	Delete “latter”	Clarification
205:5	Delete “a”	Transcription error
210:15	Change “In” to “On”	Transcription error
210:17	Change “a practical term” to “practical terms”	Transcription error
213:12	Delete “I don’t - -”	Clarification
217:24	Change “of” to “or”	Transcription error
222:13	Delete “I don’t - -”	Clarification
223:6	Change “as” to “if” and add “was not” after “product”	Clarification
223:7	Add “other” after “additional”	Clarification
234:14	Change the comma to “or”	Transcription error
235:3	Change “that” to “there”	Transcription error

<u>Page and Line</u>	<u>Change</u>	<u>Reason for Change</u>
236:12	Add “not” after “is”	Transcription error / clarification
236:18	Change “requirement, but” to “requirement. But”	Clarification
236:19	Change “the royalties are” to “the duration of the reverse royalties is”	Clarification
243:4	Delete “of”	Transcription error
243:5	Change “decline” to “declines”	Transcription error
244:12	Change “substantial - - prices” to “substantially. Prices”	Transcription error
244:22	Change the comma to “and”	Transcription error
244:23	Delete “will push”	Clarification
246:16	Add “such as” after “exceptions”	Clarification
246:17-19	Change “practically practice that product manufacturer or - - that’s probably the most likely, but correct” to “manufacture and/or commercialize the product”	Clarification
253:9	Add “actual” before “agreement”	Clarification
253:9-10	Delete “Would that we were, yes.”	Clarification
258:7	Change “is” to “has”	Transcription error
258:8	Delete the comma	Transcription error
259:11	Change “When” to “Until”	Clarification
269:12	Change the comma to “- -”	Transcription error
269:15-16	Change “and ten years is by far the most common term,” to “(and ten years is by far the most common term)”	Transcription error
271:8	Change “a - -” to “an”	Transcription error
274:8-9	Delete “of joint and - - and such - - I don’t remember if there’s provisions”	Clarification
277:22	Change “writes” to “rights”	Transcription error
280:25	Change “other agreement” to “agreement at issue in this case”	Clarification
283:25	Change “the definition” to “this royalty provision of the agreement”	Clarification
284:8	Change the comma to “and”	Transcription error
285:18	Add “the reverse royalty” after “And”	Clarification
287:5	Change “timings” to “timing”	Transcription error
287:9	Change “Dailey” to “Daly”	Transcription error
287:9	Change “the” to “Novartis”	Clarification

<u>Page and Line</u>	<u>Change</u>	<u>Reason for Change</u>
290:25	Change the second “power” to “party”	Transcription error
291:3	Change “is” to “may be”	Clarification
291:4	Change the second “financial” to “finances”	Transcription error
291:9	Add “financial” after “more”	Clarification
297:22	Change “ran, helped design, ran” to “ran and helped design”	Clarification
298:10	Change “Incyte” to “Novartis”	Clarification
298:17	Change “with.” to “with?”	Transcription error
298:18	Change the first “they” to “Novartis”	Clarification
300:11	Add “Jakafi” after “any”	Transcription error / clarification
300:15	Delete “- - brand names”	Transcription error
301:21	Add “some” after “and”	Clarification
302:11	Change the first “the” to “my”	Clarification
303:14	Add “of” before “failure”	Transcription error
305:19-20	Delete “it’s driving at - -”	Clarification
305:20	Add “is” after “at”	Transcription error
309:24	Change “- - it is the case - - actually,” to “confidentiality. It is the case actually that”	Clarification
310:18	Change “uncertainty” to “certainty”	Transcription error
310:19	Add a comma after “eNPV”	Transcription error
310:25	Add “less” after “they’re”	Clarification
311:4	Change “would” to “will”	Transcription error